

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 1800

By: Representative Lundstrum

## For An Act To Be Entitled

AN ACT TO AMEND VARIOUS STATE SECURITIES LAWS; TO  
REGULATE SECURITIES TRANSACTIONS; AND FOR OTHER  
PURPOSES.

### Subtitle

TO AMEND VARIOUS STATE SECURITIES LAWS;  
AND TO REGULATE SECURITIES TRANSACTIONS.

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

SECTION 1. Arkansas Code § 19-6-301(211), concerning the enumeration of special revenues, is repealed.

~~(211) That portion of fines collected in the Investor Education Fund in excess of one hundred fifty thousand dollars (\$150,000) in any one (1) fiscal year, § 23-42-213(e);~~

SECTION 2. Arkansas Code § 19-6-301, concerning special revenues enumerated, is amended to add an additional subdivision to read as follows:

(255) That portion of notice filing fees and penalties, § 23-42-509(a);

SECTION 3. Arkansas Code § 19-6-475 is amended to read as follows:

19-6-475. Securities Department Fund.

The Securities Department Fund shall consist of ~~those special revenues as specified in § 19-6-301(211), the first four million dollars (\$4,000,000)~~ the first two million five hundred thousand dollars (\$2,500,000) of those special revenues as specified in § 19-6-301(173), (174), ~~and~~ (245), and (255)



and such other funds as may be provided by law or regulatory action, there to be used for maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule and regulation not inconsistent with law, as set out in § 23-42-211.

SECTION 4. Arkansas Code § 23-42-102(1)(B)(i)(c), concerning the definition of an "agent" under the Arkansas Securities Act, is amended to read as follows:

- (c) Effecting transactions in covered securities exempted by:
  - (1) Section 18(b)(3) of the Securities Act of 1933, concerning sales to qualified purchasers;
  - (2) ~~Section 18(b)(4)(D)~~ Section 18(b)(4)(E) of the Securities Act of 1933, concerning sales of securities exempt under Section 3(a) of the Securities Act of 1933; or
  - (3) Rule or order of the commissioner;

SECTION 5. Arkansas Code § 23-42-102(1)(B), concerning the definition of an "agent" under the Arkansas Securities Act, is amended to add an additional subdivision to read as follows:

(iii) A person who is a registered broker-dealer in a state other than Arkansas who does not:

- (a) Have a place of business in this state;
- and
- (b) Effect securities transactions with more than three (3) persons in this state during any period of twelve (12) consecutive months as described in subdivision (3)(B)(iv) of this section.

SECTION 6. Arkansas Code § 23-42-102(6), concerning the definition of a "farm cooperative" under the Arkansas Securities Act, is repealed.

~~(6)(A) "Farm cooperative" means any cooperative formed for the purpose of:~~

- ~~(i) Purchasing, producing, processing, marketing, distributing, or selling crops or livestock for, or on behalf of, its members; or~~

~~(ii) Purchasing, marketing, or distributing meat, dairy, bakery, produce, or other food or grocery products for, or on behalf of, its members.~~

~~(B) "Farm cooperative" shall not include any association formed for the purpose of purchasing food or grocery products for, or on behalf of, consumers;~~

SECTION 7. Arkansas Code § 23-42-106(a)(1)(B), concerning a person's civil liability to a buyer under the Arkansas Securities Act, is amended to read as follows:

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in the light of circumstances under which it is made, not misleading, ~~if the buyer does not know~~ not knowing of the untruth or omission, ~~and meets the seller not sustaining~~ the burden of proof that ~~he or she~~ the seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

SECTION 8. Arkansas Code § 23-42-106(b), concerning the civil liability to a seller under the Arkansas Securities Act, is amended to read as follows:

~~(b)(1) A person who purchases a security in violation of §§ 23-42-301, 23-42-307, 23-42-507, and 23-42-508, or otherwise by means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, is liable to a seller of the security if the seller does not know of the untruth or omission and meets the burden of proof that the seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. A person is liable to a seller of a security if the person buys the security:~~

(A) In violation of § 23-42-301, § 23-42-307, § 23-42-507, or § 23-42-508; or

(B) By means of an untrue statement of a material fact or a failure to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the buyer not

sustaining the burden of proof that the buyer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(2)(A) In a successful action under subdivision (b)(1) of this section, the seller may recover costs and reasonable attorney's fees plus:

(i) Upon tender of the consideration the seller received in a transaction under subdivision (b)(1) of this section:

(a) The security; or

(b) The security plus any income or other distributions in cash or other property received directly or indirectly by the purchaser; or

(ii)(a) Damages together with interest at six percent (6%) per year from the date of purchase.

(b) Damages may include out-of-pocket losses or losses for the benefit of the bargain.

~~(B) Notice of willingness to pay the amount specified in exchange for the security is a valid tender~~ A tender made under subdivision (b)(2)(A)(i) of this section ~~pending acceptance of the tender by the purchaser~~ only requires notice in writing of the present ability to pay the amount tendered and willingness to take the security for the amount specified.

SECTION 9. Arkansas Code § 23-42-106(c), concerning the civil liability for providing investment advice under the Arkansas Securities Act, is amended to read as follows:

(c)(1) A person that directly or indirectly receives consideration for providing investment advice to another party:

(A) In violation of § 23-42-301 is liable to the other party for:

~~(i) the~~ The consideration paid for the advice; ~~;~~

~~(ii) interest~~ Interest at the rate of six percent (6%) per year from the date of payment; ~~;~~

~~(iii) costs,~~ Costs; and

~~(iv) a reasonable~~ Reasonable attorney's fee ~~fee~~ fees; or

(B) By employing a device, scheme, or artifice to defraud the other party or ~~engages~~ by engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon the other

party is liable to the other party for:

- (i) The consideration paid for the advice plus interest at the rate of six percent (6%) per year from the date of payment;
- (ii) Damages caused by the fraudulent or deceitful conduct less the amount of any income received as a result of the fraudulent or deceitful conduct;
- (iii) Costs; and
- (iv) ~~A reasonable~~ Reasonable attorney's ~~fee fees~~.

(2) Subdivision (c)(1) of this section does not apply to a broker-dealer or its agents if:

- (A) The investment advice provided is solely incidental to transacting business as a broker-dealer; and
- (B) ~~No special~~ Special compensation is not paid for the investment advice.

SECTION 10. Arkansas Code § 23-42-106(d)(1), concerning the civil liability of a secondary offender under the Arkansas Securities Act, is amended to read as follows:

(d)(1) A secondary offender has joint and several liability with a right of contribution for the actions of a primary offender unless the secondary offender satisfies the burden of proving that the secondary offender did not know, and in the exercise of reasonable care could not have known, of the existence of the actions of a ~~a~~ the primary offender that give rise to liability under this section.

SECTION 11. Arkansas Code § 23-42-106(h), concerning ability to sue under the Arkansas Securities Act, is amended to read as follows:

(h) A ~~person may~~ buyer shall not sue under this section:

(1) If the buyer received a written offer, before suit and at a time when ~~he or she~~ the buyer 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 or she~~ the buyer 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 or she~~ the buyer did not own the security unless ~~he or she~~ the

buyer rejected the offer in writing within thirty (30) days of its receipt.

SECTION 12. Arkansas Code § 23-42-209 is amended to read as follows:  
23-42-209. Injunction, mandamus, or other ancillary relief.

(a)(1)(A) Whenever it appears to the Securities Commissioner, upon sufficient grounds or evidence satisfactory to the commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, except the provisions of § 23-42-509, or any rule or order under this chapter, including any order issued under § 23-42-509, ~~he or she~~ the commissioner may summarily order the person to cease and desist from the act or practice.

(B) Upon the entry of the order, the commissioner shall promptly notify the person that the order has been entered, of the reasons therefor, and of his or her right to a hearing on the order.

(2)(A) A hearing shall be held on the written request of the person aggrieved by the order if the request is received by the commissioner within thirty (30) days of the date of the entry of the order, or if ordered by the commissioner.

(B) If ~~no~~ a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner.

(C) After notice and an opportunity for a hearing, the commissioner may:

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

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

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

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

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

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

~~(3)~~(b)(1) The commissioner may apply to the Pulaski County Circuit Court to temporarily or permanently enjoin an act or practice that violates this chapter and to enforce compliance with this chapter or any rule or order under this chapter:

(A) After an order is issued under subdivision (a)(1) or subdivision (a)(2) of this section; or

(B) Without issuing an order under subdivision (a)(1) or subdivision (a)(2) of this section.

~~(4)~~(2) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted.

~~(5)~~(3) The court ~~may~~ shall not require the commissioner to post a bond.

~~(b)~~(4) The commissioner may also obtain upon proper showing any other ancillary relief in the public interest, including without limitation:

~~(1)~~(A) The appointment of a receiver, temporary receiver, or conservator;

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

~~(3)~~(C) An accounting;

~~(4)~~(D) Disgorgement of profits;

~~(5)~~(E) Restitution; or

~~(6)~~(F) The assessment of a fine in an amount of not more than the total amount of money received in connection with a violation of this chapter.

(c) ~~Nothing herein shall~~ This chapter does not prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by stipulation, settlement, consent, or default, in lieu of a formal or informal hearing on the allegations or in lieu of the sanctions authorized by this section.

SECTION 13. Arkansas Code § 23-42-210(a)(1), concerning judicial review of a final order of the Securities Commissioner under the Arkansas Securities Act, is amended to read as follows:

(a)(1) ~~Any~~ A person aggrieved by a final order of the Securities Commissioner may obtain a review of the order in any state court of competent jurisdiction by filing in court, within ~~sixty (60)~~ thirty (30) days after the entry of the order, a written petition praying that the order be modified or

set aside in whole or in part.

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

(a)(1) There is created on the books of the Chief Fiscal Officer of the State, the Auditor of State, and the Treasurer of State a fund to be known as the "Securities Department Fund".

(2) The fund shall be used for the maintenance, operation, support, and improvement of the State Securities Department in carrying out its functions, powers, and duties as set out by law and by rule ~~and regulation~~ not inconsistent with law.

(3) The fund shall consist of those portions of fees designated for deposit into the fund ~~pursuant to~~ under §§ 23-42-304(a)(2), (a)(4), and (a)(5), ~~and § 23-42-404(b)(1), and § 23-42-509(a) and such other funds as may be provided by law or regulatory action.~~

(4) Notwithstanding subdivision (a)(3) of this section, no more than ~~four million dollars (\$4,000,000)~~ two million five hundred thousand dollars (\$2,500,000) shall be deposited into the fund in any one (1) fiscal year.

SECTION 15. The introductory language of Arkansas Code § 23-42-213(b), concerning the Investor Education Fund, is amended to read as follows:

(b) Except as provided by subsection (c) of this section, all fines imposed and collected ~~or moneys collected in lieu of a fine~~ under §§ 23-42-209 and 23-42-308 shall be deposited as special revenues into the State Treasury and credited to the Investor Education Fund, to be administered by the Securities Commissioner for the following purposes:

SECTION 16. Arkansas Code § 23-42-213(c), concerning disposition of fines under the Arkansas Securities Act, is amended to read as follows:

(c) ~~Funds~~ Fines collected in excess of one hundred fifty thousand dollars (\$150,000) ~~collected~~ in any one (1) fiscal year shall be ~~designated as special revenues and deposited into the Securities Department Fund as~~ general revenues.

SECTION 17. Arkansas Code § 23-42-302(a) and (b), concerning

registration requirements of broker-dealers, agents, and investment advisers under the Arkansas Securities Act, are amended to read as follows:

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

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

(b) The commissioner may by rule set forth the form and content of the application and establish a procedure for renewal registration or initial registration ~~whereby registration may become effective prior to the filing of a completed application or fee.~~

SECTION 18. Arkansas Code § 23-42-304(a), concerning registration filing fees under the Arkansas Securities Act, is amended to read as follows:

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

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

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

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

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

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

(6) Three hundred dollars (\$300) in the case of an exempt reporting adviser or investment adviser to a private fund that complies with exemption requirements.

SECTION 19. Arkansas Code § 23-42-308(a), concerning the action against a registration under the Arkansas Securities Act, 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:

(1) The order is in the public interest; and

(2) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director; any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration, which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

(C) Has:

(i) been Been convicted, of:

(a) A felony; or

(b) within Within the past previous ten (10) years, of any a misdemeanor involving a security, a commodity future or option contract, or any aspect of the a business involving securities business, commodities, investments, franchises, insurance, banking, or finance; or

(ii) of any felony, or has pending Pending against him or her a charge of unlawful conduct involving securities or any aspect of the securities business;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the commissioner, including without limitation an order denying, suspending, revoking, or making conditional or probationary a registration as a broker-dealer, agent,

investment adviser, or representative;

(F)(i) Is the subject of an order entered within the past five (5) years by:

(a) The securities administrator of any other state;

(b) Any national securities, commodities, or banking agency or jurisdiction;

(c) Any national securities or commodities exchange;

(d) Any securities or commodities self-regulatory organization;

(e) Any registered securities association or clearing agency denying, revoking, suspending, or expelling him or her from registration as a broker-dealer, agent, investment adviser, or representative, or the substantial equivalent of those terms;

(f) Is the subject of a United States postal fraud order; or

(g) The insurance administrator of any state.

(ii) However, the commissioner ~~may~~ shall not:

(a) Institute a revocation or suspension proceeding under this subdivision (a)(2)(F) more than five (5) years from the date of the order relied on; and

(b) Enter an order under this subdivision (a)(2)(F) on the basis of an order under another state act, unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) Has engaged in dishonest or unethical practices in the securities business;

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subdivision (a)(2)(H) without a finding of insolvency as to the broker-dealer or investment adviser;

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except that:

(i) The commissioner ~~may~~ shall not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself or herself, if he or she is an individual, or an agent of the broker-dealer;

(ii) The commissioner ~~may~~ shall not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself or herself, if he or she is an individual, or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser;

(iii) The commissioner ~~may~~ shall not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge, or both;

(iv) The commissioner shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer; and

(v) The commissioner shall consider that an investment adviser or representative is not necessarily qualified solely on the basis of experience as a broker-dealer or agent;

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

(K) Has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subdivision (a)(2)(K), and he or she shall vacate the order when the deficiency has been corrected.

SECTION 20. Arkansas Code § 23-42-308(e)(1), concerning withdrawal of registration under the Arkansas Securities Act, is amended to read as follows:

(e)(1) Withdrawal from registration as a broker-dealer, agent, investment adviser, or representative becomes effective thirty (30) days after receipt of an application to withdraw, or within such shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application to withdraw is filed or a proceeding to deny, revoke, or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application to withdraw is filed.

SECTION 21. Arkansas Code Title 23, Chapter 42, Subchapter 3, is amended to add an additional section to read as follows:

23-42-309. Protection of vulnerable adults from financial exploitation – Definitions.

(a) As used in this section:

(1) "Agencies" means:

(A) The Adult Protective Services Unit of the Department of Human Services; and

(B) The Securities Commissioner;

(2) "Eligible adult" means a person who is:

(A) Sixty-five (65) years of age or older; or

(B) Subject to supervision by the Arkansas Adult Protective Services Unit of the Department of Human Services; and

(3) "Financial exploitation" means:

(A) The wrongful or unauthorized taking, withholding, appropriation, or use of funds, assets, or property of an eligible adult; or

(B) Any act or omission made by a person, including through the use of an eligible adult's power of attorney, guardianship, or conservatorship, to:

(i) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's funds, assets, or property that results in depriving the eligible adult of rightful ownership, use, benefit, access to, or possession of his or her money, assets, or property; or

(ii) Convert funds, assets, or property of an eligible adult to deprive the eligible adult of the rightful ownership, use, benefit, access to, or possession of his or her funds, assets, or property.

(b) If an individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the individual:

(1) Should promptly disclose this information to the agencies;

(2) Who in good faith and exercising reasonable care makes a disclosure under subdivision (b)(1), shall be immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the eligible adult of the disclosure; and

(3)(A) May notify a third party previously designated by the

eligible adult.

(B) Disclosure shall not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

(C) If an individual makes a disclosure under subdivision (b)(3)(A) of this section, the individual is immune from any administrative or civil liability that might otherwise arise from the disclosure.

(c)(1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a current beneficiary if:

(A) Financial exploitation is suspected;

(B) After an internal review of a requested disbursement, the broker-dealer, investment adviser, or individual reasonably believes that the requested disbursement may result in financial exploitation; and

(C) The broker-dealer or investment adviser immediately or within two (2) business days after the requested disbursement:

(i) Provides to all parties authorized to transact business on the account written notification of the delay and the reason for the delay, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation;

(ii) Notifies the agencies; and

(iii) Continues its internal review of the suspected or attempted financial exploitation, as necessary, and reports the investigation's results to the agencies within seven (7) business days after the requested disbursement.

(2)(A) Except as provided under subdivision (c)(2)(B) of this section, a delay of a disbursement under this section shall expire upon the earliest of:

(i) A determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation; or

(ii) Fifteen (15) business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds.

(B) If either of the agencies requests that the broker-dealer or investment adviser extend the delay of disbursement, the delay

shall expire:

(i) No more than twenty-five (25) business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds;

(ii) Upon the termination by the agencies of the hold on the disbursement; or

(iii) As directed by an order of a court of competent jurisdiction.

(3) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief upon application by:

(A) The agencies;

(B) The broker-dealer or investment adviser that initiated the delay of disbursement under subdivision (c)(1) of this section; or

(C) Any other interested party.

(4) If a broker-dealer or investment adviser delays a disbursement under subdivision (c)(1) of this section in good faith and exercising reasonable care and complies with this subsection, the broker-dealer or investment adviser is immune from any administrative or civil liability that might otherwise arise from the delay in a disbursement.

(d)(1) A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation, either as part of a referral or pursuant to an investigation, to:

(A) An agency charged with administering state adult protective services law; and

(B) A law enforcement agency or entity.

(2) The records may include historical records as well as records relating to recent transactions that may comprise financial exploitation.

(3) The records, materials, data, and information made available by a broker-dealer or investment adviser under subdivision (d)(1) of this section are confidential and are not subject to examination or disclosure as public information under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(e) This section does not limit or otherwise impede the authority of

the commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by § 23-42-101 et seq.

SECTION 22. Arkansas Code § 23-42-503(c) and (d), concerning regulation of exempt securities under the Arkansas Securities Act, is amended to read as follows:

(c) The following ~~shall~~ apply to ~~farm cooperatives~~ a cooperative organized under the laws of this state as a business corporation but operated as a cooperative, or organized and operated in this state under laws addressing cooperatives, § 2-2-101 et seq., §§ 2-2-401 – 2-2-411, 2-2-413 – ~~2-2-429~~ 2-2-430, 4-30-101 – ~~4-30-117~~ 4-30-118, 4-30-201, 4-30-202, and 4-30-204 – 4-30-207, and to any nonprofit ~~farm~~ cooperative ~~which~~ that is qualified to do business in this state:

(1) Any common stock, preferred stock, promissory note, debenture, or other security may be issued to any cooperative member, if no commission or other remuneration is paid in connection with the sale or issuance of the securities or a registered agent is used, after either:

(A) ~~compliance~~ Compliance with subsection (d) of this section; or

(B) ~~delivery~~ Delivery to the cooperative member and filing, with the commissioner, of financial statements of the ~~farm~~ cooperative for each of the two (2) fiscal years as of a date not earlier than four hundred fifty-five (455) days ~~prior to~~ before the issuance of the security, all of which statements shall have been audited, examined, and certified by independent public accountants to have been prepared in accordance with generally accepted accounting principles consistently maintained by the cooperative during the fiscal years represented by the statements. ~~No registered agent shall be required if no commission or other remuneration is to be paid in connection with the offer and sale of such securities; or~~

(2) Any interest or agreement ~~which~~ that qualifies its holder to be a member or other patron of a ~~farm~~ cooperative or ~~which~~ that represents the terms or conditions by which members or other patrons ~~purchase or sell agricultural products or commodities from, to, or through a farm~~ conduct permitted business of a cooperative as set forth in § 2-2-101 et seq.; the Cooperative Marketing Act, § 2-2-401 et seq.; § 4-30-101 et seq.; and §§ 4-

30-201 – 4-30-207, or which represents a capital retain, or patronage distribution issued by a ~~farm~~ cooperative solely to its members or other patrons shall not be considered to be a security under this chapter and shall not be subject to the provisions of this chapter, provided:

(A) The instruments or interests are properly identified and not labeled with the traditional names of investment securities as defined by § 23-42-102(17);

(B) The instruments or interests are not part of a class of instruments or interests regularly bought or sold for investment purposes or for which an active trading market exists. However, this limitation shall not in any way restrict the bona fide pledge of the instruments or interests; and

(C) No commission or other remuneration is paid in connection with the sale or issuance to members or other patrons of the interests and instruments. This exemption shall not apply to those interests or instruments which possess the characteristics of an investment contract or other security as interpreted under the laws of the State of Arkansas; and

(3) The commissioner may render foreign nonprofit ~~farm~~ cooperatives the privilege afforded Arkansas nonprofit ~~farm~~ cooperatives set forth in subdivision (c)(2) of this section, provided the foreign cooperative first files supporting documents verifying that it is qualified to do business in Arkansas, that members have substantially the same rights as members of ~~farm~~ cooperatives organized under the nonprofit ~~farm~~ cooperative corporate laws of this state, that the offering is within the scope of subdivision (c)(2) of this section, and any other information which the commissioner deems appropriate.

(d)(1) Before any security may be issued as an exempted security under subdivision (a)(7) of this section or subdivision (c)(1)(A) of this section, a proof of exemption must first be filed with the commissioner, and the commissioner by order shall not have disallowed the exemption within the next ten (10) full business days.

(2) The proof of exemption shall contain a statement of the grounds upon which the exemption is claimed and a designation of the subsection of this section under which the exemption is claimed.

(3) Proofs of exemption which have not been completed within a period of one hundred eighty (180) days after filing with the commissioner

may be deemed abandoned and considered withdrawn by the applicant, provided the applicant has been notified of the deficiencies to the proof and afforded a reasonable opportunity to correct the deficiencies.

(4) Each offering shall be effective only for twelve (12) consecutive months.

(5) For every proof of exemption filed with the commissioner, under:

(A) Subdivision (a)(7) of this section, there shall be paid to the commissioner a filing fee ~~equal to one tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state. The fee shall in no case be less than one hundred dollars (\$100) nor more than~~ of five hundred dollars (\$500). ~~The commissioner shall have authority under this subsection to amend or rescind the filing fees by rule or order if the commissioner determines that the fee is excessive under the circumstances; and~~

(B) Subdivision (c)(1)(A) of this section, there shall be paid to the commissioner a filing fee of one hundred dollars (\$100).

SECTION 23. Arkansas Code § 23-42-504(a), concerning exempt transactions, is amended to read as follows:

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

(1) Any isolated nonissuer transactions, whether effected through a broker-dealer or not, provided that repeated or successive transactions shall be prima facie evidence that the transactions are not isolated nonissuer transactions;

(2) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, provided at the time of the transaction:

(A) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(B) The security is sold at a price reasonably related to the current market price of the security;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(D) A nationally recognized securities manual designated by rule or order of the ~~commissioner~~ Securities Commissioner or a document filed with the United States Securities and Exchange Commission that is publicly available through the United States Securities and Exchange Commission's Electronic Data Gathering, Analysis, and Retrieval System and contains:

(i) A description of the business and operations of the issuer;

(ii) The names of the issuer's officers and directors, if any, or, in the case of an issuer not domiciled in the United States, the corporate equivalents of such persons in the issuer's country of domicile;

(iii) An audited balance sheet of the issuer as of a date within eighteen (18) months or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited balance sheets, a pro forma balance sheet; and

(iv) An audited income statement for each of the issuer's immediately preceding two (2) fiscal years, or for the period of existence of the issuer, if in existence for less than two (2) years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statements, a pro forma income statement; and

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

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

(ii) The issuer and predecessors of the issuer of the security have been engaged in continuous business for at least three (3)

years; or

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

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

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

(3) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(4) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(5) Any transactions by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(7) A transaction by a person exempted from registration under § 23-42-102(3)(B)(v) if the transaction would be lawful in the place of residence of the offeree or purchaser had it occurred there instead of in this state;

(8) Any offer or sale:

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

(B) To a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. ~~The Securities Commissioner~~ commissioner may by order, upon petition by any person, determine if the petitioner may be deemed, upon the basis of knowledge, experience, volume, and number of transactions, and other securities background, an "institutional buyer" for purposes of this subdivision (a)(8);

(9)(A) Any transaction pursuant to an offer and sale to not more than thirty-five (35) purchasers other than those designated in subdivision (a)(8) of this section during any period of twelve (12) consecutive months, if:

(i) The seller reasonably believes that all the buyers are purchasing for investment; and

(ii) ~~No~~ A commission or other remuneration shall not be paid or given directly or indirectly for soliciting any prospective buyer in this state unless the person receiving any such commission or remuneration is registered ~~pursuant to~~ under § 23-42-301.

(B) However, the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of purchasers permitted, or waive the conditions in subdivisions (a)(9)(A)(i) and (ii) of this section with or without the substitution of a limitation on remuneration;

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities or warrants, if no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state, unless the commissioner shall, upon written application, permit the payment of a commission or other remuneration with or without the substitution of a limitation on remuneration;

(11) Any offer, but not a sale, of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; ~~and~~

(12) An offer or sale of a security by an issuer if:

(A) Either of the following applies:

(i) The issuer of the security is a corporation or other business entity organized and operating under the laws of this state and that has its principal place of business in Arkansas and the transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), as it

existed on January 1, 2017, and Rule 147 of the United States Securities Exchange Commission, as it existed on January 1, 2017, and as such, the securities shall be offered to and sold only to persons who are residents of this state at the time of purchase; or

(ii) The issuer of the security is a corporation or other business entity with its principal place of business in Arkansas and the transaction meets the requirements of the federal exemption for intrastate offerings in section 28 of the Securities Exchange Act of 1933, 15 U.S.C. § 77z-3, as it existed on January 1, 2017, and Rule 147A of the United States Securities and Exchange Commission, as it existed on January 1, 2017, and as such, the securities shall be sold only to persons who are residents of this state at the time of purchase;

(B) The sum of all cash and other consideration to be received for all sales of the security in reliance upon the exemption described in this subdivision (a)(12) shall not exceed one million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer within six (6) months after the completion of the offering;

(C) The issuer shall not accept more than five thousand dollars (\$5,000) from any single purchaser unless the purchaser is an accredited investor as defined by Rule 501 of United States Securities Exchange Commission Regulation D, 17 C.F.R. 230.501, as it existed on January 1, 2017;

(D) The issuer should reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;

(E) A commission or remuneration shall not be paid or given, directly or indirectly, for a person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer or agent under this chapter;

(F) The commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition the exemption under this subdivision (a)(12); and

(G) A filing fee of one hundred dollars (\$100) shall be paid to the commissioner for every proof of exemption filed with the commissioner under this subdivision (a)(12); and

(13) Any other transaction ~~which~~ that the commissioner by rule

or order exempts as not being necessary or appropriate in the public interest for the protection of investors.

SECTION 24. The introductory language of Arkansas Code § 23-42-509(c)(1), concerning covered securities, is amended to read as follows:

(c)(1) With respect to a covered security under section ~~18(b)(4)(E)~~ 18(b)(4)(F) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4)(F), as it existed on January 1, 2017, the commissioner may by rule or order require that no later than fifteen (15) days after the first sale of a covered security, the issuer:

SECTION 25. Arkansas Code § 23-42-509(d)(2), concerning covered securities transactions, is amended to read as follows:

~~(2)(A) Except as provided in subdivision (d)(2)(B) of this section, pay a fee in the amount of one tenth percent (0.1%) of the maximum aggregate offering price at which the securities are to be offered in this state~~ Pay a fee of one hundred dollars (\$100).

~~(B) The fee shall be at least one hundred dollars (\$100) and no more than five hundred dollars (\$500).~~

SECTION 26. Arkansas Code § 23-42-509(e), concerning covered securities transactions, is amended to read as follows:

(e) ~~In addition to a filing required by subsection (c) or subsection (d) of this section, the commissioner may by rule or order require~~ Except as provided under subsection (c) or subsection (d) of this section, with respect to a covered security under section 18(b)(3) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(3), as it existed on January 1, 2017, or section 18(b)(4) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(4), as it existed on January 1, 2017, the commissioner may by rule or order require the issuer to:

(1) ~~The concurrent filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 concerning a covered security under section 18(b)(3) or section 18(b)(4) of the Securities Act of 1933 as it existed on January 1, 2013~~ Concurrently file with the commissioner any document or information required to be filed with the United States Securities and Exchange Commission; and

(2) A Pay a fee of one hundred dollars (\$100) ~~for the filing.~~

**APPROVED: 03/27/2017**