

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 541

By: Senator Rapert

## For An Act To Be Entitled

AN ACT CONCERNING THE REGULATION OF CIVIL PROCEEDING  
ADVANCE PAYMENT CONTRACTS; TO AMEND THE REVENUE  
CLASSIFICATION LAW AND THE SECURITIES DEPARTMENT  
FUND; AND FOR OTHER PURPOSES.

## Subtitle

CONCERNING THE REGULATION OF CIVIL  
PROCEEDING ADVANCE PAYMENT CONTRACTS; AND  
TO AMEND THE REVENUE CLASSIFICATION LAW  
AND THE SECURITIES DEPARTMENT FUND.

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

SECTION 1. Arkansas Code § 19-6-301, concerning the enumeration of special revenues, is amended to add an additional subdivision to read as follows:

(253) Fees and civil penalties collected under § 23-30-101 et seq.

SECTION 2. 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) of those special revenues as specified in § 19-6-301(173), (174), and (245), 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.~~

(a)(1) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a special revenue 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 not inconsistent with law.

(3) The fund shall consist of:

(A) Fees and civil penalties designated for deposit into the fund under § 23-30-101 et seq.;

(B) That portion of moneys designated for deposit into the fund under § 23-42-213(c);

(C) The first four million dollars (\$4,000,000) of fees designated for deposit into the fund under §§ 23-42-304(a)(2), 23-42-304(a)(4) and (a)(5), and 23-42-404(b)(1); and

(D) Such other funds as may be provided by law or regulatory action.

(b) The department may promulgate the rules necessary to administer the fees, rates, tolls, or charges for the services provided by the department as required by law and is directed to prescribe and collect such fees, rates, tolls, or charges for the services in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.

SECTION 3. Arkansas Code Title 23, Chapter 30, is amended to read as follows:

Chapter 30

~~General Provisions~~ Civil Proceeding Advance Payment Transactions

23-30-101. Application.

This chapter applies to a civil proceeding advance payment transaction and a civil proceeding advance payment contract offered or entered into after October 1, 2015.

23-30-102. Definitions.

As used in this chapter:

(1)(A) "Charge" means an amount that is imposed by a civil proceeding advance payment contract provider and payable or assignable by or on behalf of a consumer claimant and is in addition to the funded amount and the contract amount regardless of the term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract to identify the amount, or of how the amount is determined or calculated by the civil proceeding advance payment contract provider.

(B) "Charge" includes without limitation:

(i) An administrative fee;

(ii) An origination fee;

(iii) An underwriting fee;

(iv) A case review fee;

(v) A case servicing fee;

(vi) A document management fee; or

(vii) Another fee:

(a) Related to services provided or costs incurred by the civil proceeding advance payment contract provider in connection with the civil proceeding advance payment contract transaction; or

(b) Imposed by the civil proceeding advance payment contract provider and payable or assignable by or on behalf of the consumer claimant, regardless of the term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract to identify the amount, or of how the amount is determined or calculated by the civil proceeding advance payment contract provider;

(2)(A) "Civil proceeding" means any of the following that is filed in, or is under the jurisdiction of, a court with jurisdiction in Arkansas or an agency or political subdivision in Arkansas:

(i) A civil action;

(ii) A mediation, an arbitration, or any other alternative dispute resolution proceeding; or

(iii) An administrative proceeding.

(B) "Civil proceeding" includes without limitation:

(i) A proceeding on appeal or remand; and

(ii) Enforcement, ancillary, or parallel proceedings;

(3) "Civil proceeding advance payment contract" means a contract for a civil proceeding advance payment contract transaction that a civil proceeding advance payment contract provider enters into, or offers to enter into, with a consumer claimant;

(4) "Civil proceeding advance payment contract provider" means the same as "civil proceeding advance payment provider";

(5) "Civil proceeding advance payment contract transaction" means the same as "civil proceeding advance payment transaction";

(6)(A) "Civil proceeding advance payment provider" means a person that enters into, or offers to enter into, a civil proceeding advance payment contract transaction with a consumer claimant in connection with a civil proceeding and who is registered with or is required to be registered with the State Securities Department.

(B) "Civil proceeding advance payment provider" does not include any of the following:

(i) An immediate family member of a consumer claimant;

(ii) A financial institution or a creditor subject to the department;

(iii) Another person:

(a) That provides financing to a civil proceeding advance payment contract provider; or

(b) To whom a civil proceeding advance payment contract provider grants a security interest or assigns any rights or interest in a civil proceeding advance payment contract transaction; or

(iv) An attorney, an accountant, a tax consultant, a public or private benefits planning professional, or a financial professional who provides services to a consumer claimant in connection with a civil proceeding;

(7)(A) "Civil proceeding advance payment transaction" means a nonrecourse transaction in which a civil proceeding advance payment contract provider provides a funded amount to a consumer claimant to use for any purpose other than prosecuting the consumer claimant's civil proceeding, if the repayment of the funded amount is:

(i) Required only if the consumer claimant prevails in the civil proceeding; and

(ii) Sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(B) "Civil proceeding advance payment transaction" includes a transaction:

(i) That is structured as a purchase; and

(ii) In which the civil proceeding advance payment contract provider purchases from the consumer claimant a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution;

(8)(A) "Consumer claimant" means a person:

(i) Who is or may become a plaintiff or a claimant in a civil proceeding; and

(ii) Who:

(a) Is offered a civil proceeding advance payment contract transaction by a civil proceeding advance payment contract provider; or

(b) Enters into a civil proceeding advance payment contract transaction with a civil proceeding advance payment contract provider.

(B) A "consumer claimant" is not required to be a resident of Arkansas;

(9)(A) "Contract amount" means, with respect to a civil proceeding advance payment contract transaction and regardless of the term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract to identify the amount or of how the amount is determined or calculated by the civil proceeding advance payment contract provider, an amount that is:

(i) In addition to the funded amount;

(ii) Payable or assignable to the civil proceeding advance payment contract provider only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(iii) Sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(B) "Contract amount" does not include charges;

(10)(A) "Funded amount" means, with respect to a civil proceeding advance payment contract transaction and regardless of the term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract to identify the amount, the amount of money:

(i) That is provided to the consumer claimant by the civil proceeding advance payment contract provider; and

(ii) The repayment of which is:

(a) Required only if the consumer claimant prevails in the consumer claimant's civil proceeding; and

(b) Sourced from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(B) In the case of a civil proceeding advance payment transaction described under subdivision (7)(B) of this section and regardless of the term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract to identify the amount, "funded amount" means the price:

(i) That is paid by the civil proceeding advance payment contract provider in purchasing from the consumer claimant a contingent right to receive a share of the potential proceeds of the consumer claimant's civil proceeding; and

(ii) The amount of which must be repaid only:

(a) If the consumer claimant prevails in the consumer claimant's civil proceeding; and

(b) From the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

(C) "Funded amount" does not include the contract amount or charges; and

(11) "Funding date" means the date on which a civil proceeding advance payment contract provider transfers the funded amount to the consumer claimant by:

(A) Personal delivery;

(B) Wire, automated clearinghouse, or other electronic

means; or

(C) Insured, certified, or registered United States mail.

23-30-103. Registration of civil proceeding advance payment contract.

(a) Except as provided in subsection (g) of this section, a person shall not enter into, or offer to enter into, a civil proceeding advance payment contract transaction with a consumer claimant or otherwise engage in business as a civil proceeding advance payment contract provider:

(1) Except as authorized by this subchapter; and

(2) Unless the person first receives a certificate of registration from the State Securities Department.

(b)(1)(A) An applicant for a certificate of registration under this section shall file an application with the department in the form and manner prescribed by the Securities Commissioner.

(B) An application form prescribed by the commissioner under this section shall require the applicant to provide the information that the commissioner determines is necessary to evaluate the character and fitness of the applicant.

(2)(A) The department may issue a certificate of registration under this section if the department finds that an applicant's business will be operated honestly and fairly within the purposes of this chapter.

(B) If the department denies an application under this section, the commissioner shall provide to the applicant written notice stating that the application has been denied and setting forth the reasons for the denial.

(3) In rules adopted under this chapter, the department may set forth circumstances under which a certificate issued under this section may be revoked or suspended for cause, including the failure of an applicant or certificate holder to pay an application fee or a renewal fee described in subsection (f) of this section.

(c) Upon written request, an applicant for a certificate of registration under this section is entitled to an administrative review by the department of the issue of the applicant's qualifications for a certificate of registration under this section if either of the following applies:

(1) The commissioner provides to the applicant written notice

that the applicant's application has been denied, as described in subsection (b) of this section, and the applicant files a timely request for a review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; or

(2) The department does not issue a decision on the applicant's application no later than sixty (60) days after the date the application is filed, and the applicant files a request for an administrative review in accordance with the procedures set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., no later than seventy-five (75) days after the date the application is filed.

(d) A certificate of registration issued by the department under this section must be renewed with the department on the dates and in the manner and form prescribed by the commissioner, but not less frequently than every two (2) years.

(e) If at any time any information contained in an initial application under subsection (b) of this section or in a renewal form or application under subsection (d) of this section is or becomes inaccurate or incomplete in a material respect, the applicant or registered civil proceeding advance payment contract provider shall promptly file a correcting amendment with the department in the form and manner prescribed by the commissioner.

(f)(1) The department may establish the following fees to cover the department's expenses in administering this chapter:

(A) An application fee that an applicant is required to submit with an initial application under subsection (b) of this section; and

(B) A renewal fee that a registered civil proceeding advance payment contract provider must submit with a renewal form or application under subsection (d) of this section.

(2) The department may impose a fee for each day that an application fee or a renewal fee, or any related documents that are required to be submitted with an initial application or a renewal application, are delinquent.

(g)(1) Notwithstanding subsection (b) of this section, a person that before August 1, 2015, enters into one (1) or more civil proceeding advance payment contract transactions that are made with a consumer claimant in connection with a civil proceeding and outstanding on September 15, 2015, and submits an application for registration under this chapter to the department after October 1, 2015, and before January 1, 2016, may enter into, or offer

to enter into, a civil proceeding advance payment contract transaction with a consumer claimant, or otherwise engage in business as a civil proceeding advance payment contract provider, while the person's application for registration under this section is pending with the department.

(2) However, if the department denies the person's application under this section, the person shall not enter into, or offer to enter into, a new civil proceeding advance payment contract transaction during the period beginning on the date of the department's denial under subsection (b) of this section and ending on the effective date of any certificate of registration subsequently issued to the person by the department under this section, subject to the person's right to a review under subsection (c) of this section and to any right to a stay or an appeal of the denial available under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) A civil proceeding advance payment contract transaction entered into by the person before the effective date of the department's denial under subsection (b) of this section is not subject to this chapter, and a civil proceeding advance payment contract entered into by the person and a consumer claimant before the effective date of the department's denial under subsection (b) of this section remains in effect according to its terms, notwithstanding the department's denial of an application described in subdivision (b)(2)(B) of this section.

23-30-104. Surety bond required.

(a) Each application for a certificate of registration under § 23-30-103 shall be accompanied by proof that the applicant has executed a surety bond in accordance with this section.

(b) A surety bond issued under this section shall:

(1) Be in a form prescribed by the Securities Commissioner;

(2) Be in effect during the term of the certificate of registration issued under this chapter;

(3) Be payable to the State Securities Department for the benefit of:

(A) The state; and

(B) A consumer claimant who enters into a civil proceeding advance payment contract transaction with the civil proceeding advance payment contract provider;

(4) Be in an amount determined by the commissioner, but not greater than fifty thousand dollars (\$50,000); and

(5) Have payment conditioned upon the civil proceeding advance payment contract provider's or any of the civil proceeding advance payment contract provider's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) Beginning with the first renewal of a certificate of registration under this chapter, for each renewal period that a registered civil proceeding advance payment contract provider continues to engage in business as a civil proceeding advance payment contract provider in connection with any civil proceedings, the registered civil proceeding advance payment contract provider shall file a new or an additional surety bond in an amount that ensures that the registered civil proceeding advance payment contract provider's surety bond under this section is equal to the amount determined by the commissioner under subdivision (b)(4) of this section.

(d)(1) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the registered civil proceeding advance payment contract provider for whom the bond is issued shall immediately notify the commissioner of the reduction and, not later than thirty (30) days after notice by the commissioner, file a new or an additional surety bond in an amount set by the commissioner.

(2) The amount of the new or additional bond set by the commissioner shall be at least the amount of the bond before payment of the claim or judgment.

(e) If for any reason a surety terminates a bond issued under this section, the registered civil proceeding advance payment contract provider shall immediately notify the department and file a new surety bond in the amount determined by the commissioner under subdivision (b)(4) of this section.

(f) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(g) The commissioner may obtain satisfaction from a surety bond issued under this section if the commissioner incurs expenses, issues a final order, or recovers a final judgment under this chapter.

23-30-105. Contract requirements.

(a) Before presenting a civil proceeding advance payment contract to a consumer claimant for the consumer claimant's signature, a civil proceeding advance payment contract provider shall ensure that the civil proceeding advance payment contract:

(1) Is complete;

(2) Has been filled in to include all amounts, dates, names, terms, provisions, and information specific to the civil proceeding advance payment contract, the civil proceeding advance payment contract provider, the consumer claimant, and the consumer claimant's civil proceeding; and

(3) Meets the requirements of this chapter.

(b) Each page of a civil proceeding advance payment contract shall include the initials of the consumer claimant.

(c)(1) If a consumer claimant is represented by an attorney in the civil proceeding on which a civil proceeding advance payment contract transaction is based, the civil proceeding advance payment contract shall contain a written acknowledgment by the attorney that attests to the following in connection with the civil proceeding advance payment contract transaction:

(A) That to the best of the attorney's knowledge, all costs and charges relating to the civil proceeding advance payment contract transaction have been disclosed to the consumer claimant;

(B) That the attorney is being paid by the consumer claimant on a contingency basis under a written fee agreement;

(C) That all proceeds of the civil proceeding will be disbursed through:

(i) A trust account of the attorney; or

(ii) A settlement fund established to receive the proceeds of the civil proceeding on behalf of the consumer claimant;

(D) That the attorney is following the instructions of the consumer claimant with respect to the civil proceeding advance payment contract transaction; and

(E) That the attorney:

(i) Has not received a referral fee or other consideration from the civil proceeding advance payment contract provider; and

(ii) Agrees not to receive a referral fee or other consideration from the civil proceeding advance payment contract provider at any time.

(2)(A) If the attorney retained by the consumer claimant in the consumer claimant's civil proceeding does not complete the acknowledgment required by this subsection, the civil proceeding advance payment contract, and the civil proceeding advance payment contract transaction to which it pertains, are void.

(B)(i) However, the civil proceeding advance payment contract, and the civil proceeding advance payment contract transaction to which it pertains, remain valid and enforceable if the consumer claimant or the attorney terminates the attorney's representation.

(ii) If, after the termination, the consumer claimant retains a new attorney in connection with the consumer claimant's civil proceeding, the new attorney shall complete an acknowledgment under this subsection for the civil proceeding advance payment contract, and the civil proceeding advance payment contract transaction to which it pertains, to remain valid and enforceable.

(d)(1) A civil proceeding advance payment contract shall be executed in duplicate.

(2) Upon execution of the civil proceeding advance payment contract, the civil proceeding advance payment contract provider shall:

(A) Furnish one (1) duplicate original and at least one (1) copy of the civil proceeding advance payment contract to the consumer claimant; and

(B) Retain for the civil proceeding advance payment contract provider's records one (1) duplicate original and at least one (1) copy of the civil proceeding advance payment contract.

(e) A civil proceeding advance payment contract provider shall not use any civil proceeding advance payment contract form, other than a standard civil proceeding advance payment contract form prescribed by the State Securities Department in rules adopted by the department under § 23-30-117, in connection with a civil proceeding unless the department first approves the civil proceeding advance payment contract form.

23-30-106. Disclosure requirements.

(a)(1) A civil proceeding advance payment contract shall include the disclosures set forth in this section.

(2) The disclosures required by this section:

(A) Constitute material terms of the civil proceeding advance payment contract; and

(B) Shall:

(i) Be set forth in at least 12-point boldface type and comply with any other typeface or stylistic specifications set forth in this section; and

(ii) Be placed clearly and conspicuously within the contract.

(b) The front page of a civil proceeding advance payment contract shall include, under appropriate headings, language specifying the following:

(1) The funded amount to be paid to the consumer claimant by the civil proceeding advance payment contract provider;

(2) The funding date;

(3)(A)(i) An itemization of all charges, whether assessed one (1) time or on a recurring basis, that are payable or assignable by the consumer claimant to the civil proceeding advance payment contract provider.

(ii) Charges under this subdivision (b)(3) shall be included in the payment schedule described in subdivision (b)(5) of this section.

(B)(i) For each charge listed, the civil proceeding advance payment contract provider shall identify whether the charge:

(a) Is to be assigned by the consumer claimant to the civil proceeding advance payment contract provider from the proceeds, if any, of the consumer claimant's civil proceeding; or

(b) Is otherwise payable by the consumer claimant to the civil proceeding advance payment contract provider.

(ii) For charges under this subdivision (b)(3), the civil proceeding advance payment contract provider shall set forth a separate payment schedule identifying the dates and amounts due;

(4) An identification of the following amounts to be assigned by the consumer claimant to the civil proceeding advance payment contract provider if the resolution of the consumer claimant's civil proceeding results in proceeds to the consumer claimant:

(A) The funded amount; and

(B)(i) The contract amount.

(ii) In identifying the contract amount under this subdivision (b)(4), it is sufficient for the civil proceeding advance payment contract provider to identify the method, formula, or multiplier by which the contract amount will be determined as of the date on which the civil proceeding advance payment contract provider receives payment from the proceeds of the consumer claimant's civil proceeding; and

(5) Beginning with the date that is one hundred eighty (180) days after the funding date, continuing every one hundred eighty (180) days thereafter, and ending with the date the amounts are actually paid or assigned to the civil proceeding advance payment contract provider, for amounts assignable by the consumer claimant to the civil proceeding advance payment contract provider from the proceeds of the consumer claimant's civil proceeding, including the funded amount, the contract amount, and any applicable charges, a payment schedule that lists:

(A) The dates; and

(B) The amounts assignable by the consumer claimant to the civil proceeding advance payment contract provider as of each date listed, regardless of whether and when such amounts are actually paid or assigned, depending on the outcome of the consumer's civil proceeding and the date on which any proceeds from the civil proceeding become available for disbursement.

(c) A civil proceeding advance payment contract shall contain, in a mailing that is postmarked not later than five (5) days after the funding date and in text that is surrounded by a border, a statement setting forth a right of rescission that allows the consumer claimant to cancel the civil proceeding advance payment contract without penalty or further obligation if the consumer claimant does either of the following:

(1) No later than five (5) days after the funding date, returns to the civil proceeding advance payment contract provider the full funded amount by hand delivering the civil proceeding advance payment contract provider's uncashed check to the civil proceeding advance payment contract provider's business location;

(2) Mails, to the address specified in the civil proceeding advance payment contract and by insured, certified, or registered United

States mail:

(A) A notice of cancellation; and

(B) The full funded amount, in the form of:

(i) The civil proceeding advance payment contract provider's uncashed check;

(ii) A registered or certified check; or

(iii) A money order.

(d) A civil proceeding advance payment contract shall contain, in text that is printed in all capital letters and surrounded by a border, the following statement:

"THE FUNDED AMOUNT (or other term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract), THE CONTRACT AMOUNT (or other term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract), AND THE \_\_\_\_\_ (insert names of any charges the repayment of which is to be sourced from the proceeds of the consumer claimant's civil proceeding) ARE PAYABLE ONLY FROM THE PROCEEDS OF YOUR CIVIL PROCEEDING, AND ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR CIVIL PROCEEDING. YOU WILL NOT OWE (insert name of civil proceeding advance payment contract provider) THE FUNDED AMOUNT (or other term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract), THE CONTRACT AMOUNT (or other term used by the civil proceeding advance payment contract provider in the civil proceeding advance payment contract), OR THE \_\_\_\_\_ (insert names of any charges the repayment of which is to be sourced from the proceeds of the consumer claimant's civil proceeding) IF THERE ARE NO PROCEEDS FROM YOUR CIVIL PROCEEDING, UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (insert name of civil proceeding advance payment contract provider)."

(e) A civil proceeding advance payment contract shall contain a statement as to whether and under what circumstances:

(1) The consumer claimant's rights and obligations under the civil proceeding advance payment contract may be sold, assigned, pledged, or transferred by the consumer claimant and, if so, whether and at what point the consumer claimant must obtain the consent of, or provide notice to, the civil proceeding advance payment contract provider of such

sale, assignment, pledge, or transfer; and

(2) The civil proceeding advance payment contract provider's rights and obligations under a civil proceeding advance payment contract may be sold, assigned, pledged, or transferred by the civil proceeding advance payment contract provider and, if so, whether and at what point the civil proceeding advance payment contract provider must obtain the consent of, or provide notice to, the consumer claimant of such sale, assignment, pledge, or transfer.

(f) A civil proceeding advance payment contract shall contain a statement as to whether, how often, and under what circumstances the civil proceeding advance payment contract provider may request from the consumer claimant or the consumer claimant's attorney periodic updates or other information concerning the consumer claimant's civil proceeding, including any of the following documents or information that may be sought by the civil proceeding advance payment contract provider:

(1) Notice of any receipt by the consumer claimant or the consumer claimant's attorney of proceeds, or written promises to pay proceeds, from the civil proceeding;

(2) Copies of nonprivileged materials, including pleadings, notices, orders, motions, briefs, or other documents filed in the civil proceeding by any person or party; and

(3) Documents or verbal information concerning nonprivileged matters or developments in connection with the civil proceeding.

(g) A civil proceeding advance payment contract shall contain the following statement immediately above the signature line for the consumer claimant:

"Do not sign this contract before you read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of this contract. Before you sign this contract, you should obtain the advice of an attorney. Depending on your circumstances, you may want to consult an accountant, a tax consultant, a public or private benefits planning professional, or a financial professional. By signing this contract, you acknowledge that if you are represented by an attorney in your civil proceeding, your attorney has provided no tax, accounting, public or private benefits planning, or financial advice concerning this transaction between you and (insert name of civil proceeding advance payment contract

provider).".

23-30-107. Transfer of funds.

A civil proceeding advance payment contract provider shall transfer the funded amount to a consumer claimant not later than the funding date, as set forth in the civil proceeding advance payment contract, by one (1) of the following means:

- (1) Personal delivery;
- (2) Wire, automated clearinghouse, or other electronic method;

or

- (3) Insured, certified, or registered United States mail.

23-30-108. Calculation of contract amount.

Subject to § 23-30-109, the contract amount in a civil proceeding advance payment contract transaction:

- (1) Shall be calculated as a predetermined amount:

(A) According to a method, formula, or multiplier determined by the civil proceeding advance payment contract provider, as described in § 23-30-106(b)(4)(B); and

(B) Based on intervals of one hundred eighty (180) days measured from the funding date through the date of assignment to the civil proceeding advance payment contract provider, as described in § 23-30-106(b)(5);

(2) May be based on, or determined as a percentage of, the funded amount; and

(3) Shall not be determined as a percentage of the consumer claimant's recovery from the consumer claimant's civil proceeding.

23-30-109. Assessment and collection of contract amount.

(a) Regardless of the contract amount that results from the calculation described in § 23-30-108, a civil proceeding advance payment contract provider shall not assess or collect, with respect to any one (1) civil proceeding advance payment contract transaction, a contract amount that exceeds seventeen percent (17%) of the funded amount.

(b) A civil proceeding advance payment contract provider shall not for the purpose of avoiding the prohibition set forth in subsection (a) of this

section:

(1) Structure a civil proceeding advance payment contract transaction arising from the same civil proceeding:

(A) As more than one (1) transaction; or

(B) In any other manner; or

(2) Impose a charge under the civil proceeding advance payment contract, whether assignable from the proceeds of the consumer claimant's civil proceeding or otherwise payable to the civil proceeding advance payment contract provider, in an amount that:

(A) Exceeds any amount, percentage, limit, or cap concerning charges and prescribed by the State Securities Department in rules adopted under this chapter; or

(B) Exceeds a reasonable amount based upon the value of the services provided or costs incurred by the civil proceeding advance payment contract provider in consideration of the charge.

(c) All or part of a charge that exceeds a reasonable amount based upon the value of the service provided or cost incurred by the civil proceeding advance payment contract provider shall be included in the contract amount for the purpose of determining compliance with subsection (a) of this section.

23-30-110. Sale, assignment, pledge, or transfer of proceeds – Liens.

(a) Subject to § 23-30-106(e)(1) and except as otherwise provided in a civil proceeding advance payment contract and agreed to by a consumer claimant and the consumer claimant's attorney, a contingent right to receive a share of the potential proceeds of a consumer claimant's civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution, may be sold, assigned, pledged, or transferred by the consumer claimant.

(b) Subject to § 23-30-106(e)(2) and except as otherwise provided in a civil proceeding advance payment contract and agreed to by a consumer claimant and the consumer claimant's attorney, a civil proceeding advance payment contract provider's rights and obligations under a civil proceeding advance payment contract may be sold, assigned, pledged, or transferred by the civil proceeding advance payment contract provider.

(c)(1) A civil proceeding advance payment contract provider's right to

receive a share of the potential proceeds of a consumer claimant's civil proceeding is subordinate only to any:

- (A) Attorney's lien;
- (B) Medical lien; or
- (C) Statutory lien.

(2) All other liens take priority according to when they attach or by normal operation of law.

23-30-111. Prohibitions.

A civil proceeding advance payment contract provider shall not do any of the following:

(1) Pay or offer to pay the following persons or their employees for referring a consumer claimant to the civil proceeding advance payment contract provider or the civil proceeding advance payment contract provider's business:

- (A) An attorney or law firm;
- (B) A medical or healthcare provider;
- (C) A chiropractor; or
- (D) A physical therapist or occupational therapist;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from any of the following persons in connection with a civil proceeding advance payment contract transaction or a potential civil proceeding advance payment contract transaction:

- (A) An attorney or law firm;
- (B) A medical or healthcare provider;
- (C) A chiropractor; or
- (D) A physical therapist or occupational therapist;

(3) Advertise or communicate in Arkansas any materially false or misleading information concerning the civil proceeding advance payment contract provider's products and services, whether such an advertisement or communication is by mail, brochure, telephone, print, radio, television, the Internet, or other electronic means;

(4)(A) Refer, in connection with a civil proceeding advance payment contract transaction, a consumer claimant to any of the following persons or any of their employees:

- (i) An attorney or law firm;

(ii) A medical or healthcare provider;

(iii) A chiropractor; or

(iv) A physical therapist or occupational therapist.

(B) However, if a consumer claimant who has consulted the civil proceeding advance payment contract provider or entered into a civil proceeding advance payment contract transaction with the civil proceeding advance payment contract provider needs legal representation in connection with the consumer claimant's civil proceeding or the civil proceeding advance payment contract transaction, the civil proceeding advance payment contract provider may refer the consumer claimant to a local or state bar association's attorney referral service;

(5)(A) Except as otherwise prohibited in the civil proceeding advance payment contract between the original civil proceeding advance payment contract provider and the consumer claimant, knowingly enter into a civil proceeding advance payment contract transaction with a consumer claimant who has previously entered into a civil proceeding advance payment contract transaction with another civil proceeding advance payment contract provider in connection with the same civil proceeding, unless the second civil proceeding advance payment contract provider first pays to, or purchases from, the original civil proceeding advance payment contract provider:

(i) Any outstanding amounts, including the funded amount, the contract amount, and any charges, under the first civil proceeding advance payment contract provider's civil proceeding advance payment contract with the consumer claimant; or

(ii) Any other amount agreed to by the civil proceeding advance payment contract providers.

(B) However, two (2) or more civil proceeding advance payment contract providers may agree to contemporaneously enter into civil proceeding advance payment contract transactions with a consumer claimant in connection with the same civil proceeding if the consumer claimant and the consumer claimant's attorney consent in writing to the arrangement;

(6)(A) Make, or receive the right to make, any decisions with respect to the conduct, settlement, or resolution of a consumer claimant's civil proceeding. However, a civil proceeding advance payment contract provider may request from a consumer claimant or the consumer claimant's

attorney periodic updates or other information concerning the consumer claimant's civil proceeding, if the nature, timing, and frequency of the requests are:

(i) Set forth in the civil proceeding advance payment contract, as required by § 23-30-106(f); and

(ii) Not such as to be harassing to the consumer claimant or the consumer claimant's attorney.

(B) A civil proceeding advance payment contract provider's right to request updates or other information under this subdivision (6) does not limit, waive, or abrogate the scope or nature of, and is subject to, any applicable statutory or common law privilege, including the work product doctrine or the attorney-client privilege; or

(7) Pay or offer to pay for court costs, filing fees, or attorney's fees in connection with a consumer claimant's civil proceeding using funds from the civil proceeding advance payment contract transaction or any other funds.

23-30-112. Financial interest by attorney or law firm prohibited.

(a) An attorney or a law firm retained by a consumer claimant in a civil proceeding on which a civil proceeding advance payment contract transaction is based shall not have a financial interest in the civil proceeding advance payment contract provider that enters into the civil proceeding advance payment contract transaction with the consumer claimant.

(b) An attorney or a law firm that refers a consumer claimant to the attorney or law firm retained by a consumer claimant in a civil proceeding on which a civil proceeding advance payment contract transaction is based shall not have a financial interest in the civil proceeding advance payment contract provider that enters into the civil proceeding advance payment contract transaction with the consumer claimant.

23-30-113. Violations.

For purposes of this chapter and applicable to civil proceeding advance payment contract transactions or civil proceeding advance payment contract providers, a violation of, or compliance with, this section includes a violation of, or compliance with:

(1) The provisions set forth in this chapter;

(2) Rules adopted by the State Securities Department under this chapter;

(3) Any policy, guidance document, or order adopted or issued by the department in connection with this chapter; or

(4) Any other state or federal law, regulation, or rule.

23-30-114. Investigations into violations.

(a) The State Securities Department may examine the books, accounts, and records of a civil proceeding advance payment contract provider and may make investigations to determine compliance with this chapter.

(b)(1) A civil proceeding advance payment contract provider shall pay all reasonably incurred costs of an examination under this section in accordance with the fee schedule adopted by the department.

(2) A fee established by the department may be charged for each day a fee under this section is delinquent.

(c)(1) To discover violations of this chapter or to secure information necessary for the enforcement of this chapter, the department may investigate any:

(A) Civil proceeding advance payment contract provider that holds a registration certificate under this chapter; or

(B) Person that the department suspects to be operating as a civil proceeding advance payment contract provider in Arkansas:

(i) Without a certificate of registration; or

(ii) Otherwise in violation of this chapter.

(2)(A) The department has all investigatory and enforcement authority under this chapter that the department has under the Arkansas Securities Act, § 23-42-101 et seq., with respect to financial institutions.

(B) If the department conducts an investigation under this section, the registered civil proceeding advance payment contract provider or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted by the department.

(d)(1) If a civil proceeding advance payment contract provider contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the civil proceeding advance payment contract provider and be subject to the department's routine examination procedures, the person that provides the service to the civil proceeding advance payment

contract provider shall, at the request of the Securities Commissioner, submit to an examination by the department.

(2) If the commissioner determines that an examination under this subsection is necessary or desirable, the examination may be made at the expense of the person to be examined.

(3) If the person to be examined under this subsection refuses to permit the examination to be made, the commissioner may order any civil proceeding advance payment contract provider that receives services from the person refusing the examination to:

(A) Discontinue receiving one (1) or more services from the person; or

(B) Otherwise cease conducting business with the person.

23-30-115. Voided contract resulting from invalid certificate of registration.

(a) If the State Securities Department determines that a reasonable belief exists that a person is operating without a valid certificate of registration or in violation of this chapter, the department may investigate the person.

(b)(1) If a person knowingly acts as a civil proceeding advance payment contract provider without a certificate of registration required by § 23-30-103, any resulting civil proceeding advance payment contract or civil proceeding advance payment contract transaction entered into by the civil proceeding advance payment contract provider and a consumer claimant is void, and the consumer claimant is not required to pay to the civil proceeding advance payment contract provider any amounts in connection with the civil proceeding advance payment contract or civil proceeding advance payment contract transaction, including the funded amount, the contract amount, or any charges.

(2) If the consumer claimant has paid to the civil proceeding advance payment contract provider any amounts in connection with the civil proceeding advance payment contract or civil proceeding advance payment contract transaction, the consumer claimant, or the department on behalf of the consumer claimant, is entitled to recover the amounts from the civil proceeding advance payment contract provider.

23-30-116. Civil penalty – Civil action.

(a) If the State Securities Department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this chapter, impose upon the person a civil penalty no greater than ten thousand dollars (\$10,000) for each violation.

(b)(1) In addition to or instead of imposing a civil penalty under subsection (a) of this section, the department may bring a civil action against a person for violating this chapter.

(2) In an action brought under subsection (b) of this section, if the court finds that the defendant has violated this chapter, the court may assess a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

(c) Civil penalties collected under this section shall be deposited into the State Treasury as special revenues and credited to the Securities Department Fund.

23-30-117. Rulemaking authorized.

The State Securities Department may adopt rules to implement this chapter.

23-30-118. Disposition of fees.

All fees collected by the State Securities Department under this chapter shall be deposited into the State Treasury as special revenues and credited to the Securities Department Fund.

SECTION 4. Arkansas Code § 23-42-211 is repealed.

~~23-42-211. Disposition of fees.~~

~~(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 §§ 23-42-304(a)(2), (a)(4), and (a)(5) and 23-42-404(b)(1) 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) shall be deposited into the fund in any one (1) fiscal year.~~

~~(b) The department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by this section and is directed to prescribe and collect such fees, rates, tolls, or charges for the services by the department in such manner as may be necessary to support the programs of the department as directed by the Governor and the General Assembly.~~

SECTION 5. DO NOT CODIFY. Effective date.

This act is effective on and after October 1, 2015.