

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 186

By: Senator Rapert
By: Representative Lowery

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS SECURITIES ACT; TO AMEND THE DEFINITION OF "INVESTMENT ADVISER" UNDER THE ARKANSAS SECURITIES ACT; CONCERNING THE DISPOSITION OF FEES UNDER THE ARKANSAS SECURITIES ACT; TO REGULATE AN EXEMPT TRANSACTION UNDER THE ARKANSAS SECURITIES ACT; TO CLARIFY THE FILING REQUIREMENTS OF CERTAIN SECURITIES UNDER THE ARKANSAS SECURITIES ACT; TO AMEND THE DEFINITION OF "CLAIMANT AGENCY" AS USED IN THE STATUTES CONCERNING COLLECTION OF DELINQUENT TAXES; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS SECURITIES ACT; AND TO AMEND THE DEFINITION OF "CLAIMANT AGENCY" AS USED IN THE STATUTES CONCERNING COLLECTION OF DELINQUENT TAXES.

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

SECTION 1. Arkansas Code § 23-42-102(9), concerning the definition of "investment adviser" under the Arkansas Securities Act, is amended to read as follows:

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



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

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

(C) "Investment adviser" does not include:

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

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

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

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

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

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

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

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

designate;

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

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

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

(8)(A) 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~~ 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.

(B) The 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) subdivision (a)(8)(A) of this section;

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

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

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

jurisdiction in which the offeree or purchaser is present; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)(1) 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~~ January 1, 2019, 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~~ January 1, 2019, the

commissioner may by rule or order require the issuer to:

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

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

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

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

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

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

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

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

(xviii) The State Securities Department.