

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

HOUSE BILL 1436

By: Representative Maddox

By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS SECURITIES ACT; TO
MODIFY CERTAIN ACTIONS AGAINST A REGISTRATION UNDER
THE ARKANSAS SECURITIES ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS SECURITIES ACT; AND
TO MODIFY CERTAIN ACTIONS AGAINST A
REGISTRATION UNDER THE ARKANSAS
SECURITIES ACT.

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

SECTION 1. 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 convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court of:

(a) A felony; or

(b) Within the previous ten (10) years, a misdemeanor involving:

(1) a A security, a commodity future or option contract, or any aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance; or

(2) Fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of the offenses under this subdivision (a)(2)(C)(i)(b)(2); or

(ii) 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 any of the following orders entered within the past five (5) years:

(a) An order entered by:

(1) The securities administrator of any other state;

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

(3) Any national securities or commodities exchange;

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

(5) 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; or

(6) The insurance administrator of any state; or

(b) A United States postal fraud order.

(ii) However, the commissioner 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; or

(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 that 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 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 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 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.

APPROVED: 3/21/23