

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/3/21
A Bill

SENATE BILL 151

By: Senator J. Dismang
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS SECURITIES ACT; AND FOR
OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS SECURITIES ACT.

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

SECTION 1. Arkansas Code § 23-42-304(a) and (b), concerning registration filing fees under the Arkansas Securities Act, are 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(e)~~ § 23-42-301, every exempt reporting adviser, and every investment adviser to a private fund 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 Securities Department Fund;
- (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 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.

~~(b) After an application for registration has been processed, in whole or in part, any A filing fee shall be is nonrefundable.~~

SECTION 2. Arkansas Code § 23-42-306(d)(2)(A), concerning examinations under the Arkansas Securities Act, is amended to read as follows:

(2)(A) The applicant, issuer, broker-dealer, or investment adviser shall pay a fee for each examination, not to exceed one hundred fifty dollars (\$150) per examiner for each day or for each part of a day, during which ~~examiners are absent from the office of the commissioner for the purpose of conducting~~ the examination is conducted.

SECTION 3. Arkansas Code § 23-42-308(c)(1), concerning the postponing or suspension of a registration under the Arkansas Securities Act, is amended to read as follows:

(c)(1) The commissioner may by order summarily postpone or suspend a registration pending final determination of any proceeding under this section.

SECTION 4. Arkansas Code § 23-42-309 is amended 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 a~~ vulnerable adult; or

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

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

(3) "Person reasonably associated with the vulnerable adult"

means:

(A) A person permitted to transact business on the account of a vulnerable adult;

(B) A person named as a beneficiary on an account of a vulnerable adult; or

(C) An immediate family member of a vulnerable adult;

(4) "Qualified individual" means an agent, an investment adviser representative, or an individual associated with a broker-dealer or investment adviser who serves in a supervisory, compliance, or legal capacity as part of the job duties of the individual; and

(5) "Vulnerable adult" means a person who is:

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

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

(C) Otherwise considered susceptible to financial exploitation.

(b) If ~~an a qualified~~ individual reasonably believes that financial exploitation of ~~an eligible a vulnerable~~ adult may have occurred, may have been attempted, or is being attempted, the qualified 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) of this section and shares documentation, including books and records, related to the suspected activity, shall be immune from administrative or civil liability that might otherwise arise from the disclosure or for any failure to notify the ~~eligible~~ vulnerable adult of the disclosure; and

(3)(A) May notify a third party previously designated by the ~~eligible~~ vulnerable adult or a person reasonably associated with the vulnerable adult.

(B) Disclosure shall not be made to any designated third party or a person reasonably associated with the vulnerable adult that is suspected of financial exploitation or other abuse of the ~~eligible~~ vulnerable adult.

(C) If ~~an~~ a qualified individual makes a disclosure under subdivision (b)(3)(A) of this section, the qualified 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 or transaction from an account of ~~an eligible~~ a vulnerable adult or an account on which ~~an eligible~~ a vulnerable adult is a current beneficiary if:

(A) Financial exploitation is suspected;

(B) After an internal review of a requested disbursement or transaction, the broker-dealer, investment adviser, or qualified 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 or transaction:

(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 or transaction.

(2)(A) Except as provided under subdivision (c)(2)(B) of this

section, a delay of a disbursement or transaction under this section shall expire upon the earliest of:

(i) A determination by the broker-dealer or investment adviser that the disbursement or transaction 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 or transaction.

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

(ii) Upon the termination by the agencies of the hold on the disbursement or transaction; 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 or transaction 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 or transaction under subdivision (c)(1) of this section; or

(C) Any other interested party.

(4) If a broker-dealer or investment adviser delays a disbursement or transaction 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 or transaction.

(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~~ The agencies; 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., but may be shared among the agencies and a law enforcement agency or entity in order to investigate or pursue appropriate action in the protection of vulnerable adults from financial exploitation.

(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 this chapter.

/s/J. Dismang