

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

State of Arkansas As Engrossed: H2/8/23 H2/14/23 S3/1/23 S3/9/23

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1307

By: Representatives Wardlaw, Achor, Andrews, Barker, Beaty Jr., Bentley, M. Berry, S. Berry, Breaux, Joey Carr, Cavenaugh, Cozart, Crawford, Dalby, Duffield, Eaves, Eubanks, Evans, C. Fite, L. Fite, Fortner, Gazaway, Gonzales, Gramlich, Hawk, D. Hodges, G. Hodges, Holcomb, Hollowell, Jean, L. Johnson, Ladyman, Long, Lundstrum, Maddox, J. Mayberry, McAlindon, McClure, McGrew, B. McKenzie, McNair, S. Meeks, Milligan, J. Moore, Painter, Pearce, Puryear, Richmond, Rye, Schulz, M. Shepherd, Steimel, Tosh, Underwood, Unger, Vaught, Walker, Warren, Watson, Wing, Wooldridge, Wooten

By: Senators Hill, B. Johnson, Hester, Irvin, Flippo, Gilmore, J. Dotson, J. Boyd, J. Bryant, Caldwell, Crowell, B. Davis, Dees, K. Hammer, M. Johnson, M. McKee, J. Payton, C. Penzo, J. Petty, Rice, Stone, G. Stubblefield, D. Sullivan, D. Wallace

For An Act To Be Entitled

AN ACT CONCERNING THE REGULATION OF ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE SCORES; TO AUTHORIZE THE TREASURER OF STATE TO DIVEST CERTAIN INVESTMENTS OR OBLIGATIONS DUE TO THE USE OF ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE-RELATED METRICS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE REGULATION OF ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE SCORES; AND TO AUTHORIZE THE TREASURER OF STATE TO DIVEST CERTAIN INVESTMENTS OR OBLIGATIONS DUE TO CERTAIN FACTORS.

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

SECTION 1. Arkansas Code Title 25, Chapter 1, is amended to add an



additional subchapter to read as follows:

Subchapter 10 – Environmental, Social Justice, or Governance Scores or Metrics

25-1-1001. Definitions.

As used in this subchapter:

(1) "Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile;

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;

(3) "Direct holdings" means, with respect to a financial company, all securities of that financial company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests;

(4)(A) "Discriminate" means a company's:

(i) Refusal to engage in the trade of any goods or services with an entity based solely on its status as an energy, fossil fuel, firearms, or ammunition industry entity; or

(ii) Termination of an existing business relationship with an entity based solely on the entity's status as an energy, fossil fuel, firearms, or ammunition industry entity.

(B) "Discriminate" does not include actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients;

(5)(A) "Discriminates against energy companies" means, without ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(i) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond

applicable federal and state law; or

(ii) Does business with a company described by subdivision (5)(A)(i) of this section.

(B) "Discriminates against energy companies" does not include actions by an investment adviser in accordance with the investment-related guidelines, policies, or preferences of its clients;

(6)(A) "Discriminate against a firearm entity" means, without ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company engages in the production, sale, or manufacturing of firearms or ammunition.

(B) "Discriminate against a firearm entity" does not include:

(i) The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories;

(ii) Actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients;
or

(iii) A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:

(a) To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or

(b) For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's status as a firearm entity;

(7) "Environmental, social justice, and other governance-related factors" means any nonpecuniary factors that a financial services provider uses to evaluate a company's policies including without limitation:

(A) Environmental impact; and

(B) Diversity and inclusion policies;

(8)(A) "Financial services provider" means an entity regulated by the State Bank Department, State Securities Department, or a similar

federal regulatory agency, engaged in or transacting business in this state, including without limitation:

(i) A state or national bank or trust company;

(ii) A state or federal savings and loan

association;

(iii) A state or federal credit union;

(iv) A building and loan association;

(v) A mortgage banker, mortgage broker, loan

officer, or mortgage servicer under the Fair Mortgage Lending Act, 23-39-501 et seq.; or

(vi) An entity that provides money services under the Uniform Money Services Act, 23-55-101 et seq.

(B) "Financial services provider" includes any other entity that:

(i) Holds and receives deposits, savings, and share accounts;

(ii) Issues certificates of deposit; or

(iii) Provides to its customers any deposit accounts that the funds are subject to withdrawal by check, instrument, order, or electronic means to make third-party payments, including the provision of financial technology services;

(9) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases;

(10) "Firearm entity" means:

(A) A firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or

(B) A corporation, unincorporated association, federation, business league, or business organization that:

(i) Is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(ii) Has two (2) or more firearm entities, as described under subdivision (10)(A) of this section, as members; and

(iii) Is exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described by Section 501(c) of the Internal Revenue Code;

(11)(A) "Indirect holdings" means, with respect to a financial services provider, all securities of the financial services provider held in an account or fund, including a mutual fund, managed by one (1) or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to this subchapter.

(B) "Indirect holdings" does not include any money invested under a plan described by Sections 401(a), 401(k), 403(b), or 457 of the Internal Revenue Code of 1986, as it existed on January 1, 2023;

(12) "Public entity" means a state or local government entity, including a:

(A) Department, division, agency, office, commission, board, or other government organization;

(B) Political subdivision, including a city, county, municipality, town, or conservation district; and

(C) Public school, school district, charter school, or public institution of higher education; and

(13)(A) "Refuse to deal" means the practice of refusing or denying any interaction with a person.

(B) "Refuse to deal" does not include actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients.

25-1-1002. List of financial services providers.

(a) The Treasurer of State shall maintain a list of financial services providers as determined by the ESG Oversight Committee under § 25-1-1006 on the Treasurer of State's website.

(b) The Treasurer of State shall post the list of financial services providers that discriminate against energy companies or firearms entities or otherwise refuse to deal based on environmental, social justice, and other governance-related factors on the Treasurer of State's website.

(c)(1) Forty-five (45) days before including a financial services provider on a list under § 25-1-1006, the ESG Oversight Committee shall send a written notice to the financial services provider.

(2) The written notice under subdivision (c)(1) of this section shall include the following information:

(A) A determination by the ESG Oversight Committee under § 25-1-1006 that the financial services provider has discriminated against energy companies or firearms entities or otherwise refused to deal based on environmental, social justice, and other governance-related factors;

(B) Identify the evidence of discrimination relied on by the ESG Oversight Committee, in making the determination;

(C) Placement of the financial services provider on a list in forty-five (45) days unless, within thirty (30) days following the receipt of the written notice, the financial services provider demonstrates that it is not discriminating against energy companies or firearms entities or otherwise refusing to deal based on environmental, social justice, and other governance-related factors; and

(D) Publication of the list will be on the Treasurer of State's website.

(d)(1) If the ESG Oversight Committee provides written notice to a financial services provider under subdivision (c)(1) of this section based on information from an energy, fossil fuel, firearms, or ammunition company, then the energy, fossil fuel, firearms, or ammunition company shall be required to consent to the disclosure of any financial information held by the financial services provider of the energy, fossil fuel, firearms, or ammunition company to the ESG Oversight Committee, whether or not the information is confidential or proprietary, to allow the financial services provider to demonstrate that the financial services provider is not discriminating against energy, fossil fuel, firearm, or ammunition companies or otherwise refusing to deal with energy, fossil fuel, firearms, or ammunition companies based on environmental, social justice, and other governance-related factors.

(2) If the energy, fossil fuel, firearms, or ammunition company refuses to consent to the disclosure of financial information under subdivision (e)(1) of this section, then the:

(A) ESG Oversight Committee shall withdraw the written notice to the financial services provider under subdivision (c)(1) of this section; and

(B) Financial services provider shall not be on the list under subsection (a) of this section.

25-1-1003. Divestment of public funds.

(a) The Treasurer of State shall divest the state of all direct or indirect holdings with a financial services provider included on the list published on the Treasurer of State's website under § 25-1-1002 for:

(1) Retirement holdings, as soon as practicable but no later than three hundred sixty-five (365) calendar days after the financial services provider's inclusion on the list published under § 25-1-1002; and

(2) All other holdings, within sixty (60) days of the financial services provider's inclusion on the list published under § 25-1-1002.

(b) A public entity shall divest itself of all direct or indirect holdings with a financial services provider included on the list published on the Treasurer of State's website under § 25-1-1002 for:

(1) Retirement holdings, as soon as practicable but no later than three hundred sixty-five (365) calendar days after the financial services provider's inclusion on the list published under § 25-1-1002; and

(2) All other holdings, within sixty (60) days of the financial services provider's inclusion on the list published under § 25-1-1002.

(c) This subchapter shall not be construed to create a cause of action against an investment advisor, financial services provider, or any public entity, or their respective trustees, officers, directors, agents, or employees.

(d) An investment advisor or public entity, or their respective trustees, officers, directors, agents, or employees, shall not be sued for breach of fiduciary duty for complying with his or her divestment obligations under this section.

25-1-1004. Investment of public funds.

(a) A state investment shall be made in the sole interest of the beneficiary state taxpayer.

(b) The Treasurer of State's evaluation of an investment shall be based only on pecuniary factors.

(c) A public entity shall not invest cash funds with a financial services provider if the financial services provider is listed on the Treasurer of State's website under § 25-1-1002.

25-1-1005. Sources of information.

(a) In determining whether or not to include a financial services provider on the list under § 25-1-1002, the Treasurer of State, at the direction of the Attorney General, shall consider and may rely upon the following information:

(1) A financial services provider's certification that it is not engaged in discrimination against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, and has not discriminated without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors;

(2) Statements or information made publicly available by the financial services provider's governing body, an executive director of a financial services provider, or any other officer or employee of the financial services provider with the authority to issue policy statements on behalf of the financial services provider; and

(3) Information published by a state or federal government entity.

(b) In determining whether or not to include a financial services provider on the list under § 25-1-1002, the Treasurer of State, at the direction of the Attorney General, may consider various factors including the following but shall not make a determination based only on the following:

(1) Statements or complaints by an energy, fossil fuel, firearms, or ammunition company; or

(2) Media reports of any investment adviser or financial services provider's boycott of energy, fossil fuel, firearms, or ammunition companies.

(c) A financial services provider shall not be compelled to produce or disclose any data or information deemed confidential, privileged, or otherwise protected from disclosure by state or federal law.

25-1-1006. ESG Oversight Committee.

(a)(1) The ESG Oversight Committee is created to determine a list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors.

(2) The committee shall be composed of:

(A) A citizen of this state who is appointed by the Governor;

(B) A citizen of this state who is appointed by the President Pro Tempore of the Senate;

(C) A citizen of this state who is appointed by the Speaker of the House of Representatives;

(D) A citizen of this state who is appointed by the Attorney General; and

(E) The Treasurer of State or his or her designee.

(3) The committee shall serve at the pleasure of the Governor.

(b)(1) Within ninety (90) days of the appointments to the committee under subdivision (a)(2) of this section, the committee shall prepare and provide to each public entity a list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors.

(2) The determination by the committee under subdivision (b)(1) of this section shall not be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) Upon furnishing the list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors to each public entity, the committee shall expire automatically.

(d) If the Governor determines that a financial services provider has begun or ceased to discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors, the Governor may reestablish the committee at any time by notifying in writing the President Pro Tempore, the Speaker of the House of Representatives, Attorney General, and Treasurer of State.

25-1-1007. Exemption from divestment for certain investments.

If an investment is subject to divestment under this subchapter but is locked into a maturity date and an early divestment would result in a financial penalty and cause a negative financial impact to the state, then

the investment is exempt from divestiture under this subchapter in order to prevent financial harm to the state and ensure that the fiduciary duty for the Treasurer of State is met.

/s/Wardlaw