

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

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 41

By: Senators Hill, B. Johnson, Hester, Irvin, Flippo, Gilmore, J. Dotson
By: Representatives Wardlaw, Eubanks, Richmond, Milligan, Beaty Jr., Haak, Andrews, M. Berry,
Cavanaugh, Cozart, Duffield, L. Fite, Jean, McNair, M. Shepherd, Vaught

For An Act To Be Entitled

AN ACT TO REGULATE ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE SCORES OR METRICS; TO ALLOW THE TREASURER OF STATE TO DIVEST THE STATE OF STOCKS, SECURITIES, OR OTHER OBLIGATIONS DUE TO DISCRIMINATION BASED ON ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE-RELATED FACTORS; AND FOR OTHER PURPOSES.

Subtitle

TO REGULATE ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE SCORES OR METRICS; AND TO ALLOW THE TREASURER OF STATE TO DIVEST THE STATE OF STOCKS, SECURITIES, OR OTHER OBLIGATIONS.

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. Legislative intent.

(a) The General Assembly finds that:

(1) The energy, fossil fuel, firearms, and ammunition industries:



- (A) Produce consumer-ready resources;
- (B) Continue to create thousands of jobs for Arkansas's workforce; and
- (C) Remain committed to the safety of Arkansas communities and the preservation of the environment;
- (2) The energy, fossil fuel, firearms, and ammunition industries have been discriminated against at the national level;
- (3) In order to be successful in the energy, fossil fuel, firearms, and ammunition industries, these businesses rely on the provision of Arkansas goods and services;
- (4) Certain government regulators are using their regulatory power over the banking and financial systems to drive political agendas which distort limited government, free market, and free speech principles;
- (5) Rulemaking, regardless of asset thresholds, has a real risk of impacting smaller financial services providers; and
- (6) Certain states are interfering in the free market by encouraging or discouraging lending to politically favored or disfavored industries to the detriment of taxpayers.

(b) It is the intent of the General Assembly that:

- (1) The Treasurer of State shall divest the state of stocks, securities, or other obligations if a financial services provider or an investment manager discriminates without a reasonable business purpose against certain businesses involved in the energy, fossil fuel, firearms, or ammunition industries or investments based on the use of environmental, social justice, or other governance-related factors; and
- (2) A public entity shall divest itself of cash funds from a financial services provider that discriminates without a reasonable business purpose against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, or otherwise discriminates without a reasonable business purpose against a business based on environmental, social justice, or other governance-related factors.

25-1-1002. Definitions.

As used in this subchapter:

- (1)(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;

(2) "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

(3) "Reasonable business purpose" means a purpose directly related to:

(A) Promoting the financial success or stability of a financial services provider;

(B) Mitigating risk to a financial services provider;

(C) Complying with legal or regulatory requirements; or

(D) Limiting liability of a financial services provider.

25-1-1003. Environmental, social justice, or governance score or metric – Prohibited use.

(a)(1) The Treasurer of State shall divest the state of stocks, securities, or other obligations if the Treasurer of State, in consultation with the Attorney General, determines that an investment manager discriminates without a reasonable business purpose against:

(A) A business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries; or

(B) Investments based on environmental, social justice, or governance-related factors.

(2) If the Treasurer of State divests the state of stocks, securities, or other obligations under subdivision (a)(1) of this section, then an individual, a person, a retirement system, or an association shall not sue or pursue a private cause of action against the investment manager.

(b)(1) If the Treasurer of State, in consultation with Attorney General, determines that a financial services provider discriminates without a reasonable business purpose against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, or otherwise discriminates without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors, the Treasurer of State shall post the name of the financial services provider on a list on the Treasurer of State's website.

(2) The list under subdivision (b)(1) of this section shall be updated by the Treasurer of State with any changes within a reasonable time.

(c)(1) A public entity shall divest itself of cash funds if the financial services provider is listed on the Treasurer of State's website under subdivision (b)(1) of this section.

(2) If a public entity divests itself of cash funds under subdivision (c)(1) of this section, then an individual, a person, a retirement system, or an association shall not sue or pursue a private cause of action against the financial services provider.

(3) Within sixty (60) days of the placement of a financial services provider on the list under subdivision (b)(1) of this section, a public entity shall divest funds on deposit with the listed financial services provider.

(d)(1) Any state investment shall be made in the sole interest of the beneficiary state taxpayer.

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

25-1-1004. Notice to financial services providers.

(a)(1) Forty-five (45) days before including a financial services provider on a list under § 25-1-1003(b)(1), the Treasurer of State, in consultation with the Attorney General, shall send a written notice to the financial services provider.

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

(A) The Treasurer of State, in consultation with the Attorney General, has determined that the financial services provider has discriminated without a reasonable business purpose against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, or otherwise has discriminated without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors;

(B) The financial services provider will be placed 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 engaged in discrimination against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, or that it has ceased all activity that discriminates without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors; and

(C) The list is published on the Treasurer of State's website.

(b)(1) Following a financial services provider's inclusion on the list under § 25-1-1003(b)(1), the Treasurer of State, in consultation with the Attorney General, shall remove the financial services provider from the list if the financial services provider demonstrates that the financial services provider has ceased all activity that discriminates without a reasonable business purpose against a business that provides services or products to energy, fossil fuel, firearms, or ammunition industries, and has ceased all

activity that discriminates without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors.

(2) Within thirty (30) days of satisfying the requirements under subdivision (b)(1) of this section, a financial services provider shall be removed from the list under § 25-1-1003(b)(1).

25-1-1005. Sources of information.

(a) In determining whether or not to include a financial services provider on the list under § 25-1-1003(b)(1), the Treasurer of State, in consultation with 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 § 25-1-1003(b)(1), the Treasurer of State, in consultation with 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 manager 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.