

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

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H2/8/23 H2/14/23

A Bill

HOUSE BILL 1307

5 By: Representatives Wardlaw, Achor, Andrews, Barker, Beaty Jr., Bentley, M. Berry, S. Berry, Breaux,
6 Joey Carr, Cavenaugh, Cozart, Crawford, Dalby, Duffield, Eaves, Eubanks, Evans, C. Fite, L. Fite,
7 Fortner, Gazaway, Gonzales, Gramlich, Hawk, D. Hodges, G. Hodges, Holcomb, Hollowell, Jean, L.
8 Johnson, Ladyman, Long, Lundstrum, Maddox, J. Mayberry, McAlindon, McClure, McGrew, B.
9 McKenzie, McNair, S. Meeks, Milligan, J. Moore, Painter, Pearce, Puryear, Richmond, Rye, Schulz, M.
10 Shepherd, Steimel, Tosh, Underwood, Unger, Vaught, Walker, Warren, Watson, Wing, Wooldridge,
11 Wooten
12 By: Senators Hill, B. Johnson, Hester, Irvin, Flippo, Gilmore, J. Dotson, J. Boyd, J. Bryant, Caldwell,
13 Crowell, B. Davis, Dees, K. Hammer, M. Johnson, M. McKee, J. Payton, C. Penzo, J. Petty, Rice, Stone,
14 G. Stubblefield, D. Sullivan, D. Wallace

For An Act To Be Entitled

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

Subtitle

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

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

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



1 additional subchapter to read as follows:

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

4
5 25-1-1001. Definitions.

6 As used in this subchapter:

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

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

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

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

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

23 (B) Termination of an existing business relationship with
24 an entity based solely on the entity's status as an energy, fossil fuel,
25 firearms, or ammunition industry entity;

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

31 (i) Engages in the exploration, production,
32 utilization, transportation, sale, or manufacturing of fossil fuel-based
33 energy and does not commit or pledge to meet environmental standards beyond
34 applicable federal and state law; or

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

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

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

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

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

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

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

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

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

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

30 (A) Environmental impact; and

31 (B) Diversity and inclusion policies;

32 (8)(A) "Financial services provider" means an entity regulated
33 by the State Bank Department, State Securities Department, or a similar
34 federal regulatory agency, engaged in or transacting business in this state,
35 including without limitation:

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

1 (ii) A state or federal savings and loan
2 association;
3 (iii) A state or federal credit union;
4 (iv) A building and loan association;
5 (v) A mortgage banker, mortgage broker, loan
6 officer, or mortgage servicer under the Fair Mortgage Lending Act, 23-39-501
7 et seq.; or

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

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

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

14 (ii) Issues certificates of deposit; or

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

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

21 (10) "Firearm entity" means:

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

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

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

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

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

34 (11)(A) "Indirect holdings" means, with respect to a financial
35 services provider, all securities of the financial services provider held in
36 an account or fund, including a mutual fund, managed by one (1) or more

1 persons not employed by a state governmental entity, in which the state
2 governmental entity owns shares or interests together with other investors
3 not subject to this subchapter.

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

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

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

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

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

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

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

20
21 25-1-1002. List of financial services providers.

22 (a)(1) The Treasurer of State shall, at the direction of the Attorney
23 General, prepare, maintain, and provide to each state governmental entity, a
24 list of financial services providers that discriminate against energy
25 companies or firearms entities or otherwise refuse to deal based on
26 environmental, social justice, and other governance-related factors.

27 (2) The determination by the Treasurer of State under
28 subdivision (a)(1) of this section shall not be subject to the Arkansas
29 Administrative Procedure Act, § 25-15-201 et seq.

30 (b) If the Treasurer of State, at the direction of the Attorney
31 General, determines that a financial services provider has ceased
32 discriminating against energy companies or firearms entities or otherwise
33 refusing to deal based on environmental, social justice, and other
34 governance-related factors, the Treasurer of State shall remove the financial
35 services provider from the list described in subdivision (a)(1) of this
36 section within thirty (30) days.

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

5 (d)(1) Forty-five (45) days before including a financial services
6 provider on a list under subdivision (a)(1) of this section, the Treasurer of
7 State, at the direction of the Attorney General, shall send a written notice
8 to the financial services provider.

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

11 (A) A determination by the Treasurer of State, at the
12 direction of the Attorney General, that the financial services provider has
13 discriminated against energy companies or firearms entities or otherwise
14 refused to deal based on environmental, social justice, and other governance-
15 related factors;

16 (B) Identify the evidence of discrimination relied on by
17 the Treasurer of State, at the direction of the Attorney General, in making
18 the determination;

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

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

27 (e)(1) If the Treasurer of State, at the direction of the Attorney
28 General, provides written notice to a financial services provider under
29 subdivision (d)(1) of this section based on information from an energy,
30 fossil fuel, firearms, or ammunition company, then the energy, fossil fuel,
31 firearms, or ammunition company shall be required to consent to the
32 disclosure of any financial information held by the financial services
33 provider of the energy, fossil fuel, firearms, or ammunition company to the
34 Treasurer of State and the Attorney General, whether or not the information
35 is confidential or proprietary, to allow the financial services provider to
36 demonstrate that the financial services provider is not discriminating

1 against energy, fossil fuel, firearm, or ammunition companies or otherwise
2 refusing to deal with energy, fossil fuel, firearms, or ammunition companies
3 based on environmental, social justice, and other governance-related factors.

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

7 (A) Treasurer of State, at the direction of the Attorney
8 General, shall withdraw the written notice to the financial services provider
9 under subdivision (d)(1) of this section; and

10 (B) Financial services provider shall not be on the list
11 under subdivision (a)(1) of this section.

12
13 25-1-1003. Divestment of public funds.

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

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

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

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

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

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

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

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

1 under this section.

2
3 25-1-1004. Investment of public funds.

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

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

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

11
12 25-1-1005. Sources of information.

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

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

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

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

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

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

36 (2) Media reports of any investment adviser or financial

1 services provider's boycott of energy, fossil fuel, firearms, or ammunition
2 companies.

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

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/s/Wardlaw

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