

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/3/21

A Bill

SENATE BILL 151

5 By: Senator J. Dismang
6 By: Representative Maddox
7

For An Act To Be Entitled

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

Subtitle

14 TO AMEND THE ARKANSAS SECURITIES ACT.

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

19 SECTION 1. Arkansas Code § 23-42-304(a) and (b), concerning
20 registration filing fees under the Arkansas Securities Act, are amended to
21 read as follows:

22 (a) Every applicant for initial or renewal registration, ~~and~~ every
23 person making a notice filing as required by ~~§ 23-42-301(e)~~ § 23-42-301,
24 every exempt reporting adviser, and every investment adviser to a private
25 fund shall pay a filing fee of:

- 26 (1) Three hundred dollars (\$300) in the case of a broker-dealer;
- 27 (2) Seventy-five dollars (\$75.00) in the case of an agent, of
28 which twenty-five dollars (\$25.00) shall be designated as special revenues
29 and shall be deposited into the Securities Department Fund;
- 30 (3) Three hundred dollars (\$300) in the case of an investment
31 adviser;
- 32 (4) Seventy-five dollars (\$75.00) in the case of a
33 representative, of which twenty-five dollars (\$25.00) shall be designated as
34 special revenues and shall be deposited into the Securities Department Fund;
- 35 (5) Fifty dollars (\$50.00) in the case of a branch office, of
36 which the entire amount shall be designated as special revenues and deposited



1 into the Securities Department Fund; and

2 (6) Three hundred dollars (\$300) in the case of an exempt
3 reporting adviser or investment adviser to a private fund that complies with
4 exemption requirements.

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

7
8 SECTION 2. Arkansas Code § 23-42-306(d)(2)(A), concerning examinations
9 under the Arkansas Securities Act, is amended to read as follows:

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

15
16 SECTION 3. Arkansas Code § 23-42-308(c)(1), concerning the postponing
17 or suspension of a registration under the Arkansas Securities Act, is amended
18 to read as follows:

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

22
23 SECTION 4. Arkansas Code § 23-42-309 is amended to read as follows:

24 23-42-309. Protection of vulnerable adults from financial exploitation
25 – Definitions.

26 (a) As used in this section:

27 (1) “Agencies” means:

28 (A) The Adult Protective Services Unit of the Department
29 of Human Services; and

30 (B) The Securities Commissioner;

31 (2) ~~“Eligible adult” means a person who is:~~

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

33 ~~(B) Subject to supervision by the Arkansas Adult~~
34 ~~Protective Services Unit of the Department of Human Services; and~~

35 ~~(3) “Financial exploitation” means:~~

36 (A) The wrongful or unauthorized taking, withholding,

1 appropriation, or use of funds, assets, or property of ~~an eligible a~~
2 vulnerable adult; or

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

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

11 (ii) Convert funds, assets, or property of ~~an~~
12 ~~eligible a vulnerable~~ adult to deprive the ~~eligible vulnerable~~ adult of the
13 rightful ownership, use, benefit, access to, or possession of his or her
14 funds, assets, or property;

15 (3) "Person reasonably associated with the vulnerable adult"
16 means:

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

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

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

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

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

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

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

30 (C) Otherwise considered susceptible to financial
31 exploitation.

32 (b) If ~~an a qualified~~ individual reasonably believes that financial
33 exploitation of ~~an eligible a vulnerable~~ adult may have occurred, may have
34 been attempted, or is being attempted, the qualified individual:

35 (1) Should promptly disclose this information to the agencies;

36 (2) Who in good faith and exercising reasonable care makes a

1 disclosure under subdivision (b)(1) of this section and shares documentation,
2 including books and records, related to the suspected activity, shall be
3 immune from administrative or civil liability that might otherwise arise from
4 the disclosure or for any failure to notify the ~~eligible~~ vulnerable adult of
5 the disclosure; and

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

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

13 (C) If ~~an~~ a qualified individual makes a disclosure under
14 subdivision (b)(3)(A) of this section, the qualified individual is immune
15 from any administrative or civil liability that might otherwise arise from
16 the disclosure.

17 (c)(1) A broker-dealer or investment adviser may delay a disbursement
18 or transaction from an account of ~~an eligible~~ a vulnerable adult or an
19 account on which ~~an eligible~~ a vulnerable adult is a current beneficiary if:

20 (A) Financial exploitation is suspected;

21 (B) After an internal review of a requested disbursement
22 or transaction, the broker-dealer, investment adviser, or qualified
23 individual reasonably believes that the requested disbursement may result in
24 financial exploitation; and

25 (C) The broker-dealer or investment adviser immediately or
26 within two (2) business days after the requested disbursement or transaction:

27 (i) Provides to all parties authorized to transact
28 business on the account written notification of the delay and the reason for
29 the delay, unless any such party is reasonably believed to have engaged in
30 suspected or attempted financial exploitation;

31 (ii) Notifies the agencies; and

32 (iii) Continues its internal review of the suspected
33 or attempted financial exploitation, as necessary, and reports the
34 investigation's results to the agencies within seven (7) business days after
35 the requested disbursement or transaction.

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

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

3 (i) A determination by the broker-dealer or
4 investment adviser that the disbursement or transaction will not result in
5 financial exploitation; or

6 (ii) Fifteen (15) business days after the date on
7 which the broker-dealer or investment adviser first delayed disbursement of
8 the funds or transaction.

9 (B) If either of the agencies requests that the broker-
10 dealer or investment adviser extend the delay of disbursement or transaction,
11 the delay shall expire:

12 (i) No more than twenty-five (25) business days
13 after the date on which the broker-dealer or investment adviser first delayed
14 disbursement or transaction of the funds;

15 (ii) Upon the termination by the agencies of the
16 hold on the disbursement or transaction; or

17 (iii) As directed by an order of a court of
18 competent jurisdiction.

19 (3) A court of competent jurisdiction may enter an order
20 extending the delay of the disbursement or transaction of funds or may order
21 other protective relief upon application by:

22 (A) The agencies;

23 (B) The broker-dealer or investment adviser that initiated
24 the delay of disbursement or transaction under subdivision (c)(1) of this
25 section; or

26 (C) Any other interested party.

27 (4) If a broker-dealer or investment adviser delays a
28 disbursement or transaction under subdivision (c)(1) of this section in good
29 faith and exercising reasonable care and complies with this subsection, the
30 broker-dealer or investment adviser is immune from any administrative or
31 civil liability that might otherwise arise from the delay in a disbursement
32 or transaction.

33 (d)(1) A broker-dealer or investment adviser shall provide access to
34 or copies of records that are relevant to the suspected or attempted
35 financial exploitation, either as part of a referral or pursuant to an
36 investigation, to:

1 (A) ~~An agency charged with administering state adult~~
2 ~~protective services law~~ The agencies; and

3 (B) A law enforcement agency or entity.

4 (2) The records may include historical records as well as
5 records relating to recent transactions that may comprise financial
6 exploitation.

7 (3) The records, materials, data, and information made available
8 by a broker-dealer or investment adviser under subdivision (d)(1) of this
9 section are confidential and are not subject to examination or disclosure as
10 public information under the Freedom of Information Act of 1967, § 25-19-101
11 et seq., but may be shared among the agencies and a law enforcement agency or
12 entity in order to investigate or pursue appropriate action in the protection
13 of vulnerable adults from financial exploitation.

14 (e) This section does not limit or otherwise impede the authority of
15 the commissioner to access or examine the books and records of broker-dealers
16 and investment advisers as otherwise provided by this chapter.

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18 */s/J. Dismang*
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