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2 94th General Assembly
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4

A Bill

SENATE BILL 41

5 By: Senators Hill, B. Johnson, Hester, Irvin, Flippo, Gilmore, J. Dotson
6 By: Representatives Wardlaw, Eubanks, Richmond, Milligan, Beaty Jr., Haak, Andrews, M. Berry,
7 Cavanaugh, Cozart, Duffield, L. Fite, Jean, McNair, M. Shepherd, Vaught
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For An Act To Be Entitled

10 AN ACT TO REGULATE ENVIRONMENTAL, SOCIAL JUSTICE, OR
11 GOVERNANCE SCORES OR METRICS; TO ALLOW THE TREASURER
12 OF STATE TO DIVEST THE STATE OF STOCKS, SECURITIES,
13 OR OTHER OBLIGATIONS DUE TO DISCRIMINATION BASED ON
14 ENVIRONMENTAL, SOCIAL JUSTICE, OR GOVERNANCE-RELATED
15 FACTORS; AND FOR OTHER PURPOSES.
16
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Subtitle

18 TO REGULATE ENVIRONMENTAL, SOCIAL
19 JUSTICE, OR GOVERNANCE SCORES OR METRICS;
20 AND TO ALLOW THE TREASURER OF STATE TO
21 DIVEST THE STATE OF STOCKS, SECURITIES,
22 OR OTHER OBLIGATIONS.
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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28 SECTION 1. Arkansas Code Title 25, Chapter 1, is amended to add an
29 additional subchapter to read as follows:

30 Subchapter 10 – Environmental, Social Justice, or Governance Scores or
31 Metrics
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33 25-1-1001. Legislative intent.

34 (a) The General Assembly finds that:

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



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

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

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

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33 25-1-1002. Definitions.

34 As used in this subchapter:

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

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

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

4 (ii) A state or federal savings and loan
 5 association;

6 (iii) A state or federal credit union;

7 (iv) A building and loan association;

8 (v) A mortgage banker, mortgage broker, loan
 9 officer, or mortgage servicer under the Fair Mortgage Lending Act, § 23-39-
 10 501 et seq.; or

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

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

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

17 (ii) Issues certificates of deposit; or

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

22 (2) "Public entity" means a state or local government entity,
 23 including a:

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

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

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

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

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

34 (B) Mitigating risk to a financial services provider;

35 (C) Complying with legal or regulatory requirements; or

36 (D) Limiting liability of a financial services provider.

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2 25-1-1003. Environmental, social justice, or governance score or
3 metric – Prohibited use.

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

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

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

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

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

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

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

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

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

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

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

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6 25-1-1004. Notice to financial services providers.

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

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

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

20 (B) The financial services provider will be placed on a
21 list in forty-five (45) days unless, within thirty (30) days following the
22 receipt of the written notice, the financial services provider demonstrates
23 that it is not engaged in discrimination against a business that provides
24 services or products to the energy, fossil fuel, firearms, or ammunition
25 industries, or that it has ceased all activity that discriminates without a
26 reasonable business purpose against a business based on the use of
27 environmental, social justice, or governance-related factors; and

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

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

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

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

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8 25-1-1005. Sources of information.

9 (a) In determining whether or not to include a financial services
10 provider on the list under § 25-1-1003(b)(1), the Treasurer of State, in
11 consultation with the Attorney General, shall consider and may rely upon the
12 following information:

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

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

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

26 (b) In determining whether or not to include a financial services
27 provider on the list under § 25-1-1003(b)(1), the Treasurer of State, in
28 consultation with the Attorney General, may consider various factors
29 including the following but shall not make a determination based only on the
30 following:

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

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

36 (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.

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