

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

# A Bill

SENATE BILL 151

5 By: Senator J. Dismang  
6

## For An Act To Be Entitled

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

### Subtitle

12 TO AMEND THE ARKANSAS SECURITIES ACT.  
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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18 SECTION 1. Arkansas Code § 23-42-304(a) and (b), concerning  
19 registration filing fees under the Arkansas Securities Act, are amended to  
20 read as follows:

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

25 (1) Three hundred dollars (\$300) in the case of a broker-dealer;  
26 (2) Seventy-five dollars (\$75.00) in the case of an agent, of  
27 which twenty-five dollars (\$25.00) shall be designated as special revenues  
28 and shall be deposited into the Securities Department Fund;

29 (3) Three hundred dollars (\$300) in the case of an investment  
30 adviser;

31 (4) Seventy-five dollars (\$75.00) in the case of a  
32 representative, of which twenty-five dollars (\$25.00) shall be designated as  
33 special revenues and shall be deposited into the Securities Department Fund;

34 (5) Fifty dollars (\$50.00) in the case of a branch office, of  
35 which the entire amount shall be designated as special revenues and deposited  
36 into the Securities Department Fund; and



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

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

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

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

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

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

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

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

25 (a) As used in this section:

26 (1) "Agencies" means:

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

29 (B) The Securities Commissioner;

30 (2) ~~"Eligible adult" means a person who is:~~

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

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

34 ~~(3) "Financial exploitation" means:~~

35 (A) The wrongful or unauthorized taking, withholding,  
 36 appropriation, or use of funds, assets, or property of ~~an eligible a~~

1 vulnerable adult; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) Who in good faith and exercising reasonable care makes a  
36 disclosure under subdivision (b)(1) of this section and shares documentation,

1 including books and records, related to the suspected activity, shall be  
 2 immune from administrative or civil liability that might otherwise arise from  
 3 the disclosure or for any failure to notify the ~~eligible~~ vulnerable adult of  
 4 the disclosure; and

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

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

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

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

19 (A) Financial exploitation is suspected;

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

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

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

30 (ii) Notifies the agencies; and

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

35 (2)(A) Except as provided under subdivision (c)(2)(B) of this  
 36 section, a delay of a disbursement or transaction under this section shall

1 expire upon the earliest of:

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

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

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

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

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

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

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

21 (A) The agencies;

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

25 (C) Any other interested party.

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

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

36 (A) ~~An agency charged with administering state adult~~

1 ~~protective services law~~ The agencies; and

2 (B) A law enforcement agency or entity.

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

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

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

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