

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

1 State of Arkansas *As Engrossed: H2/8/23 H2/14/23 S3/1/23 S3/9/23*

2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1307

4

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

15

16

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.

23

24

25

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.

32

33

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

35

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)(A) "Discriminate" means a company's:

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

26 (B) "Discriminate" does not include actions by an
27 investment adviser according to the investment-related guidelines, policies,
28 or preferences of its clients;

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

34 (i) Engages in the exploration, production,
35 utilization, transportation, sale, or manufacturing of fossil fuel-based
36 energy and does not commit or pledge to meet environmental standards beyond

1 applicable federal and state law; or

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

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

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

13 (B) "Discriminate against a firearm entity" does not
14 include:

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

18 (ii) Actions by an investment adviser according to
19 the investment-related guidelines, policies, or preferences of its clients;
20 or

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

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

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

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

33 (A) Environmental impact; and

34 (B) Diversity and inclusion policies;

35 (8)(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, 23-39-501
10 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 (9) "Firearm" means a weapon that expels a projectile by the
23 action of explosive or expanding gases;

24 (10) "Firearm entity" means:

25 (A) A firearm, firearm accessory, or ammunition
26 manufacturer, distributor, wholesaler, supplier, or retailer; or

27 (B) A corporation, unincorporated association, federation,
28 business league, or business organization that:

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

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

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

1 (11)(A) "Indirect holdings" means, with respect to a financial
2 services provider, all securities of the financial services provider held in
3 an account or fund, including a mutual fund, managed by one (1) or more
4 persons not employed by a state governmental entity, in which the state
5 governmental entity owns shares or interests together with other investors
6 not subject to this subchapter.

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

10 (12) "Public entity" means a state or local government entity,
11 including a:

12 (A) Department, division, agency, office, commission,
13 board, or other government organization;

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

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

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

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

23
24 25-1-1002. List of financial services providers.

25 (a) The Treasurer of State shall maintain a list of financial services
26 providers as determined by the ESG Oversight Committee under § 25-1-1006 on
27 the Treasurer of State's website.

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

32 (c)(1) Forty-five (45) days before including a financial services
33 provider on a list under § 25-1-1006, the ESG Oversight Committee shall send
34 a written notice to the financial services provider.

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

1 (A) A determination by the ESG Oversight Committee under §
2 25-1-1006 that the financial services provider has discriminated against
3 energy companies or firearms entities or otherwise refused to deal based on
4 environmental, social justice, and other governance-related factors;

5 (B) Identify the evidence of discrimination relied on by
6 the ESG Oversight Committee, in making the determination;

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

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

15 (d)(1) If the ESG Oversight Committee provides written notice to a
16 financial services provider under subdivision (c)(1) of this section based on
17 information from an energy, fossil fuel, firearms, or ammunition company,
18 then the energy, fossil fuel, firearms, or ammunition company shall be
19 required to consent to the disclosure of any financial information held by
20 the financial services provider of the energy, fossil fuel, firearms, or
21 ammunition company to the ESG Oversight Committee, whether or not the
22 information is confidential or proprietary, to allow the financial services
23 provider to demonstrate that the financial services provider is not
24 discriminating against energy, fossil fuel, firearm, or ammunition companies
25 or otherwise refusing to deal with energy, fossil fuel, firearms, or
26 ammunition companies based on environmental, social justice, and other
27 governance-related factors.

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

31 (A) ESG Oversight Committee shall withdraw the written
32 notice to the financial services provider under subdivision (c)(1) of this
33 section; and

34 (B) Financial services provider shall not be on the list
35 under subsection (a) of this section.

36

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

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

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

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

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

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

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

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

22 (d) An investment advisor or public entity, or their respective
23 trustees, officers, directors, agents, or employees, shall not be sued for
24 breach of fiduciary duty for complying with his or her divestment obligations
25 under this section.

26
27 25-1-1004. Investment of public funds.

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

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

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

35
36 25-1-1005. Sources of information.

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

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

11 (2) Statements or information made publicly available by the
12 financial services provider's governing body, an executive director of a
13 financial services provider, or any other officer or employee of the
14 financial services provider with the authority to issue policy statements on
15 behalf of the financial services provider; and

16 (3) Information published by a state or federal government
17 entity.

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

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

24 (2) Media reports of any investment adviser or financial
25 services provider's boycott of energy, fossil fuel, firearms, or ammunition
26 companies.

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

30
31 25-1-1006. ESG Oversight Committee.

32 (a)(1) The ESG Oversight Committee is created to determine a list of
33 financial services providers that discriminate against energy, fossil fuel,
34 firearms, or ammunition companies or otherwise refuse to deal based on
35 environmental, social justice, and other governance-related factors.

36 (2) The committee shall be composed of:

1 (A) A citizen of this state who is appointed by the
2 Governor;

3 (B) A citizen of this state who is appointed by the
4 President Pro Tempore of the Senate;

5 (C) A citizen of this state who is appointed by the
6 Speaker of the House of Representatives;

7 (D) A citizen of this state who is appointed by the
8 Attorney General; and

9 (E) The Treasurer of State or his or her designee.

10 (3) The committee shall serve at the pleasure of the Governor.

11 (b)(1) Within ninety (90) days of the appointments to the committee
12 under subdivision (a)(2) of this section, the committee shall prepare and
13 provide to each public entity a list of financial services providers that
14 discriminate against energy, fossil fuel, firearms, or ammunition companies
15 or otherwise refuse to deal based on environmental, social justice, and other
16 governance-related factors.

17 (2) The determination by the committee under subdivision (b)(1)
18 of this section shall not be subject to the Arkansas Administrative Procedure
19 Act, § 25-15-201 et seq.

20 (c) Upon furnishing the list of financial services providers that
21 discriminate against energy, fossil fuel, firearms, or ammunition companies
22 or otherwise refuse to deal based on environmental, social justice, and other
23 governance-related factors to each public entity, the committee shall expire
24 automatically.

25 (d) If the Governor determines that a financial services provider has
26 begun or ceased to discriminate against energy, fossil fuel, firearms, or
27 ammunition companies or otherwise refuse to deal based on environmental,
28 social justice, and other governance-related factors, the Governor may
29 reestablish the committee at any time by notifying in writing the President
30 Pro Tempore, the Speaker of the House of Representatives, Attorney General,
31 and Treasurer of State.

32
33 25-1-1007. Exemption from divestment for certain investments.

34 If an investment is subject to divestment under this subchapter but is
35 locked into a maturity date and an early divestment would result in a
36 financial penalty and cause a negative financial impact to the state, then

1 the investment is exempt from divestiture under this subchapter in order to
2 prevent financial harm to the state and ensure that the fiduciary duty for
3 the Treasurer of State is met.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/Wardlaw