

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative J. Miller**

A Bill

HOUSE BILL 1855

For An Act To Be Entitled

8 "AN ACT TO CREATE THE ARKANSAS CAPITAL ACCESS PROGRAM FOR
9 SMALL BUSINESS; TO PROVIDE FOR LEGISLATIVE INTENT AND
10 PURPOSE; TO PROVIDE FOR DEFINITIONS; TO AUTHORIZE THE
11 ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO CONTRACT WITH
12 FINANCIAL INSTITUTIONS; TO AUTHORIZE THE CREATION OF THE
13 CAPITAL ACCESS FUND; TO PROVIDE FOR THE ESTABLISHMENT OF
14 LOAN LOSS RESERVE ACCOUNTS AND PROVIDE FOR TRANSFERS TO
15 LOAN LOSS RESERVE ACCOUNTS; TO PROVIDE FOR ENROLLMENT OF
16 QUALIFIED LOANS; PRESCRIBING OTHER MATTERS THERETO;
17 DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

Subtitle

19 "TO CREATE THE ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL
20 BUSINESS."

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

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25 SECTION 1. This act may be referred to and cited as the "Arkansas
26 Capital Access Program for Small Business Act of 1993".

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28 SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF PUBLIC NECESSITY.

29 The General Assembly finds:

30 (a) There is a persistent shortage of capital available to small
31 businesses in Arkansas and there exists an immediate and urgent need to
32 provide the means and methods for providing financing:

33 (i) to improve the viability of small businesses in the state by
34 stabilizing and increasing employment in small businesses;

35 (ii) to foster an environment that promotes the establishment of

1 new small businesses which reduces the state's unemployment rate by hiring new
2 employees;

3 (iii) to complement Arkansas financial institutions to better
4 serve their customers in ways which contribute to a strengthened and
5 diversified Arkansas economy, and which does not compete with Arkansas
6 financial institutions.

7 (b) Small businesses make important contributions to economic growth
8 and vitality in this state.

9 (c) Small businesses comprise approximately 85% of the business
10 entities in this state.

11 (d) Small businesses provide approximately 98% of the private sector
12 employment in this state.

13 (e) All national economic indicators establish that the greatest source
14 of future new employment is in the small business sector of the economy.

15 (f) Many private sector financial institutions in Arkansas are limited
16 in their ability to provide financing to small but rapidly growing businesses.

17 (g) There exists a need to leverage private sector investment in
18 entrepreneurial activity, and in economic development finance; therefore,
19 state assistance for development finance should reflect a leveraging
20 investment strategy.

21 (h) It is the purpose of this act to establish a capital access program
22 under which the state of Arkansas through the Arkansas Development Finance
23 Authority will provide public fiscal resources to assist Arkansas financial
24 institutions to overcome obstacles and constraints in meeting the full range
25 of economically sound financing needs of Arkansas small businesses.

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27 SECTION 3. DEFINITIONS. The following terms shall have the definitions
28 ascribed to them unless the context requires otherwise:

29 (a) "Act" means the Arkansas Capital Access Program for Small Business
30 Act of 1993.

31 (b) "Authority" means the Arkansas Development Finance Authority.

32 (c) "Financial institution" means all state banks, savings and loan
33 associations, and any other financial institutions of this state which are or
34 shall become a depository of state funds, which agree to participate in the
35 program.

1 (d) "Loss reserve account" means an account in any financial
2 institution which is established and maintained by the Authority for the
3 benefit of a financial institution participating in the Program.

4 (e) "Program" means the Arkansas Capital Access Program for Small
5 Business.

6 (f) "Qualified business" means any person, conducting business for
7 profit or not for profit, that is authorized to conduct business in the state
8 of Arkansas.

9 (g) "Qualified loan" means a loan or portion of a loan made by a
10 financial institution to a qualified business for any business activity that
11 has its primary economic effect in Arkansas.

12 (h) "State" means the state of Arkansas.

13

14 SECTION 4. CONTRACTS WITH FINANCIAL INSTITUTIONS FOR CAPITAL ACCESS;
15 CONTENTS OF CONTRACT.

16 (a) The Authority may contract with any financial institution for the
17 purpose of allowing the financial institution to participate in the Program.

18 (b) A contract between the Authority and a financial institution under
19 this section shall provide:

20 (i) For the creation of a loss reserve account by the Authority
21 for the benefit of the financial institution.

22 (ii) That the financial institution, qualified business and the
23 Authority will deposit moneys to the credit of the institution's loss reserve
24 account when the financial institution makes a qualified loan to a qualified
25 business.

26 (iii) That the Authority will pay moneys in the loss reserve
27 account, not exceeding an amount equal to the total amount credited to the
28 loss reserve account, to the financial institution to reimburse the
29 institution for any financial loss incurred as a result of any qualified loan
30 made under the Program.

31 (iv) That the liability of the Authority to the financial
32 institution under the contract is limited to the amount of money credited to
33 the loss reserve account of the institution.

34 (v) For such other terms as the Authority may require.

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1 SECTION 5. CAPITAL ACCESS FUND; USE; INVESTMENT EARNINGS;
2 ADMINISTRATIVE EXPENSES.

3 (a) There is hereby created within the Authority the Capital Access
4 Fund. All moneys deposited into the fund are for the purpose of making
5 payments to loan loss reserve accounts established under Section 6 of this
6 act. *All monies available for deposit into this fund shall be restricted to*
7 *only such cash funds available to the Authority for the purposes provided*
8 *herein.*

9 (b) Moneys in the Capital Access Fund may be invested as provided in
10 Ark. Code Ann. § 15-5-407.

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12 SECTION 6. LOSS RESERVE ACCOUNTS; LIMITATION ON AMOUNT.

13 (a) The Authority shall establish a loss reserve account for each
14 financial institution with which the Authority makes a contract.

15 (b) The loss reserve account for a financial institution shall consist
16 of moneys paid in fees by borrowers and the financial institution and moneys
17 transferred to the account from the Capital Access Fund.

18 (c) The Authority may establish and maintain loss reserve accounts
19 with any financial institution under such policies as the Authority may adopt.

20 (d) All moneys in a loss reserve account are the property of the
21 Authority.

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23 SECTION 7. ENROLLMENT OF QUALIFIED LOAN IN PROGRAM; PROCEDURE; FEE;
24 TRANSFERS TO LOSS RESERVE ACCOUNT.

25 (a) When a financial institution participates in the Program, if the
26 financial institution decides to enroll a qualified loan under the Program in
27 order to obtain the protection against loss provided by its loss reserve
28 account, the financial institution shall notify the Authority of the loan
29 within 10 days after the loan is made. The notification shall be in writing
30 on a form prescribed by the Authority.

31 (b) When making a qualified loan that will be enrolled under the
32 Program, the financial institution shall require the qualified business to
33 which the loan is made to pay a fee of not less than one and one-half percent
34 of the principal amount of the loan but not more than three and one-half
35 percent of such principal amount. The financial institution shall also pay a

1 fee in an amount equal to the fee paid by the borrower, provided, however,
2 that the financial institution may collect the amount of its fee from the
3 qualified borrower. The financial institution shall deliver the fees
4 collected under this subsection to the Authority for deposit in the loss
5 reserve account for the institution.

6 (c) When depositing fees collected under subsection (b) of this
7 section to the credit of the loss reserve account for a financial institution,
8 the Authority shall transfer an amount that is not less than the total amount
9 of the fees paid by the borrower and the financial institution from the
10 Capital Access Fund to the loss reserve account for the institution.

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12 SECTION 8. CLAIMS FOR REIMBURSEMENT OF LOSSES; AMOUNTS SUBJECT TO
13 REIMBURSEMENT.

14 (a) The Authority shall establish procedures under which financial
15 institutions participating in the Program may submit claims for reimbursement
16 for losses incurred as a result of qualified loan defaults.

17 (b) Costs for which a financial institution may be reimbursed from its
18 loss reserve account include loan principal, accrued interest on the
19 principal, actual and necessary costs of seeking recovery of the principal
20 amount and interest thereon and any other related costs.

21 (c) A financial institution may seek reimbursement of loan losses
22 prior to the liquidation of collateral from defaulted loans. The financial
23 institution shall repay its loss reserve account for any moneys received as
24 reimbursement under this section if the financial institution recovers moneys
25 from the borrower or from the liquidation of collateral for the defaulted
26 loan.

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28 SECTION 9. RULES. The Authority may adopt such rules as it considers
29 necessary to carry out its duties, functions and powers relating to the
30 Program.

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32 SECTION 10. FINANCIAL REPORT OF CAPITAL ACCESS FUND.

33 (a) At least semi-annually of every calendar year, the Authority shall
34 prepare a report conforming to generally accepted accounting principles that
35 describe the financial condition of the Capital Access Fund, and describes the

1 results and economic impact of the Program.

2 (b) The reports required under this section shall be submitted to the
3 Governor and to the Arkansas Legislative Council.

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5 SECTION 11. All provisions of this act of a general and permanent
6 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
7 Code Revision Commission shall incorporate the same in the Code.

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9 SECTION 12. If any provision of this act or the application thereof to
10 any person or circumstance is held invalid, such invalidity shall not affect
11 other provisions or applications of the act which can be given effect without
12 the invalid provision or application, and to this end the provisions of this
13 act are declared to be severable.

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15 SECTION 13. All laws and parts of laws in conflict with this act are
16 hereby repealed.

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18 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined by the
19 Seventy-Ninth General Assembly that there is an urgent need to provide
20 assistance to financial institutions in providing affordable financing to
21 small businesses in Arkansas and that the Authority possesses the expertise
22 and resources to establish and administer the Program. Therefore, an
23 emergency is hereby declared to exist and this Act being necessary for the
24 preservation of the public peace, health, and safety shall be in full force
25 and effect from and after its passage.

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/s/John E. Miller

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As Engrossed: 3/15/93

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