

As Engrossed: 4/7/95

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Mahony**

A Bill

ACT 1322 OF 1995
SENATE BILL 758

For An Act To Be Entitled

8 "AN ACT TO AMEND THE BANK HOLDING COMPANY SUBSIDIARY TRUST
9 COMPANY FORMATION ACT OF 1989; AND FOR OTHER PURPOSES."

Subtitle

12 "TO PROVIDE A PROCEDURE FOR A NATIONAL
13 TRUST COMPANY LOCATED IN THE STATE OF
14 ARKANSAS TO SUBSTITUTE TRUST POWERS WITH
15 AFFILIATED BANKS."

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

19 SECTION 1. Arkansas Code 23-32-1902 is amended to read as follows:

20 "§ 23-32-1902. Legislative findings.

21 The General Assembly of the State of Arkansas finds that it would be in
22 the best interest of the population of Arkansas to permit bank holding
23 companies to create, form, and establish subsidiary trust companies or
24 national trust companies to the extent provided in this subchapter in order to
25 improve customer service, significantly reduce overhead costs, and improve
26 their ability to meet increased competition."

28 SECTION 2. Arkansas Code 23-32-1903 is amended to read as follows:

29 "§ 23-32-1903. Definitions.

30 For purposes of this subchapter:

31 (1) Affiliated bank means a state or national bank, having its main
32 office in this state, more than fifty percent (50%) of the voting stock of
33 which is owned directly or indirectly by:

34 (A) *The same bank holding company that owns, directly or*
35 *indirectly, more than fifty percent (50%) of the voting stock of a subsidiary*
36 *trust company or national trust company; or*

1 (B) The same five (5) or fewer persons who are individuals,
2 estates, or trusts that own directly or indirectly more than fifty percent
3 (50%) of the voting stock of the bank holding company described in subdivision
4 (1)(A) of this section, taking into account the stock ownership of each such
5 person only to the extent such ownership is identical with respect to each of
6 the bank and the bank holding company;

7 (2) Subsidiary trust company means a corporation organized under this
8 subchapter to conduct trust business and business incidental to trust
9 business, having its main office in this state, of which more than fifty
10 percent (50%) of the voting stock is owned directly or indirectly by a *bank*
11 *holding company as defined by § 23-32-301 et seq. which also owns, directly or*
12 *indirectly, an Affiliated Bank.*

13 (3) National Trust Company means a company organized under the laws
14 of the United States to conduct trust business and business incidental to
15 trust business, having its main office in this state, of which more than fifty
16 percent (50%) of the voting stock is owned directly or indirectly by a *bank*
17 *holding company, as defined by § 23-32-301, et seq. which also owns, directly*
18 *or indirectly, an Affiliated Bank."*

19

20 SECTION 3. Arkansas Code 23-32-1904 is amended to read as follows:

21 "§ 23-32-1904. Creation, formation, etc. - Powers - Location.

22 (a) Notwithstanding the provisions of § 23-32-306, *bank holding*
23 *companies that own, directly or indirectly, an Affiliated Bank are authorized*
24 *and empowered by the provisions of this subchapter (i) to create, form, and*
25 *establish subsidiary trust companies under this subchapter for the purpose of*
26 *combining the trust operations of their affiliated banks into a single trust*
27 *operation and (ii) to create, form, and establish national trust companies*
28 *under the laws of the United States.*

29 (b) The newly formed subsidiary trust company shall only have the
30 ability to conduct trust business that could be conducted by the individual
31 trust departments combined from the affiliated banks to create the subsidiary
32 trust company.

33 (c) *Offices of a subsidiary trust company may be located only (i) in*
34 *communities where its affiliated banks or their branches are located; or (ii)*
35 *in communities where it would be authorized to have an office if it were a*

1 national trust company.

2 (d) The newly formed national trust company shall have the ability to
3 conduct business as allowed by the laws of the United States._"

4

5 SECTION 4. Arkansas Code 32-31-1905 is amended to read as follows:

6 "§ 23-32-1905. Substitution of subsidiary trust company or national
7 trust company for affiliated bank.

8 (a) A subsidiary trust company or national trust company and one (1) or
9 more of its affiliated banks may enter into one (1) or more agreements under
10 which the subsidiary trust company or national trust company is substituted as
11 fiduciary for each affiliated bank in each fiduciary account listed in the
12 agreement. The agreement shall be filed with the Bank Commissioner before the
13 effective date of the substitution and must include:

14 (1) A list of each fiduciary account for which substitution is
15 requested; and

16 (2) The effective date of the substitution, which may not be less
17 than ninety (90) days after the date of the agreement.

18 (b) Not later than ninety (90) days before the effective date of a
19 substitution under this section, the parties to the substitution agreement
20 shall send written notice of the substitution to the following:

21 (1) Each person who is readily ascertainable as a beneficiary of
22 the account because of the receipt of statements of account by the person, or
23 in the case of a minor beneficiary, by a parent, conservator, or guardian of
24 the minor beneficiary;

25 (2) Each cofiduciary;

26 (3) Each surviving settlor of a trust;

27 (4) Each issuer of a security for which the affiliated bank
28 administers a fiduciary account;

29 (5) The plan sponsor of each employee benefit plan;

30 (6) The principal of each agency account; and

31 (7) The guardian of the person of each ward under guardianship.

32 (c) The notice must be sent by United States mail to the person's
33 current address as shown on the fiduciary records. If the fiduciary has no
34 address for the person on its records, the fiduciary shall make a reasonable
35 attempt to ascertain the person's current address. The notice must disclose

1 the person's rights with respect to objecting to the transfer of the fiduciary
2 account and the liability of the existing fiduciary and the substitute
3 fiduciary for their actions. Intentional failure to send the required notice
4 renders the substitution of fiduciary ineffective, but an unintentional
5 failure to send the required notice does not impair the validity or effect of
6 substitution. If a substitution of a subsidiary trust company is ineffective
7 because of a defect in the required notice, the actions taken by the
8 subsidiary trust company before the determination of the invalidity of the
9 substitution are valid if the actions would have been valid if performed by
10 the affiliated bank.

11 (d) Except as provided by this subsection, the prospective designation
12 in a will or other instrument of the affiliated bank as fiduciary is
13 considered designation of the subsidiary trust company or national trust
14 company, and any grant in the will or other instrument of any discretionary
15 power is considered conferred on the subsidiary trust company or national
16 trust company. However, the affiliated bank and subsidiary trust company or
17 national trust company may agree in writing to have the designation of the
18 affiliated bank as fiduciary be binding, or the creator of the fiduciary
19 account may, by appropriate language in the document creating the fiduciary
20 account, provide that the fiduciary account is not eligible for substitution
21 under this subchapter.

22 (e) Substitution under this section is effective for all purposes on
23 the effective date stated in the agreement between the subsidiary trust
24 company or national trust company and the affiliated bank, unless, not later
25 than fifteen (15) days before the effective date, a party entitled to notice
26 of the substitution under subsection (b) of this section files a written
27 petition in a court of competent jurisdiction seeking to have the substitution
28 denied under § 23-32-1906 and provides the affiliated bank with a copy of the
29 filed petition.

30 (f) If a petition is filed and notice is given under subsection (e) of
31 this section, the substitution takes effect when the petition is withdrawn or
32 dismissed or when the court enters a final order denying the relief sought.

33 (g) On the effective date, the subsidiary trust company or national
34 trust company succeeds to all right, title, and interest in all property that
35 the affiliated bank holds as fiduciary, except property held for accounts for

1 which there has been no substitution under this subchapter, without the
2 necessity of any instrument of transfer or conveyance, and the subsidiary
3 trust company or national trust company shall, without the necessity of any
4 judicial action or action by the creator of the fiduciary account, become
5 fiduciary and perform all the duties and obligations and exercise all the
6 powers and authority connected with or incidental to that fiduciary capacity
7 in the same manner as if the subsidiary trust company or national trust
8 company had been originally named or designated fiduciary. However, the
9 affiliated bank is responsible and liable for all actions taken by it while it
10 acted as fiduciary._"

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12 SECTION 5. Arkansas Code 23-32-1906 is amended to read as follows:

13 "§ 23-32-1906. Removal of accounts from operation of substitution
14 agreement - Denial of substitution.

15 (a) A fiduciary account may be removed from the operation of the
16 agreement by an amendment to the agreement filed with the Bank Commissioner
17 before the effective date stated in the agreement.

18 (b) The substitution of a subsidiary trust company or national trust
19 company as fiduciary of an account may be denied if the court having
20 jurisdiction, on notice and hearing, determines that the substitution of
21 fiduciary is a material detriment to the account or to the beneficiaries of
22 the account.

23 (c) Subsection (b) of this section is cumulative to any applicable
24 provision for removal of a fiduciary or appointment of a successor fiduciary
25 under Arkansas law or in the instrument creating the fiduciary relationship.

26 (d) In any proceeding under this section, the court may award costs and
27 reasonable and necessary attorney's fees as the court considers equitable and
28 just._"

29

30 SECTION 6. Arkansas Code 23-32-1907 is amended to read as follows:

31 "§ 23-32-1907. Deposits.

32 (a) A subsidiary trust company or national trust company may deposit
33 with an affiliated bank fiduciary funds that are being held pending
34 investment, distribution, or payment of debts.

35 (b) A subsidiary trust company or national trust company may deposit

1 with an affiliated bank fiduciary funds as a permanent investment if
2 authorized by the settlor in the instrument creating the trust or if
3 authorized in a writing delivered to the trustee by a beneficiary currently
4 eligible to receive distributions from a trust._"

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6 SECTION 7. Arkansas Code 23-32-1908 is amended to read as follows:

7 "§ 23-32-1908. Responsibility for acts and omissions.

8 (a) The subsidiary trust company's or national trust company_s owning
9 bank holding company shall file with the Bank Commissioner an irrevocable
10 undertaking to be fully responsible for the existing and future fiduciary acts
11 and omissions of its subsidiary trust company or national trust company.

12 (b) If an affiliated bank has given bond to secure performance of its
13 duties and the subsidiary trust company or national trust company qualifies as
14 successor fiduciary, the subsidiary trust company or national trust company
15 shall give bond to secure performance of its duties in the same manner._"

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17 SECTION 8. Arkansas Code 23-32-1909 is amended to read as follows:

18 "§ 23-32-1909. Qualification as successor fiduciary.

19 For the purposes of qualification as successor fiduciary under any
20 requirements contained in any document creating a fiduciary account or any
21 statute of this state relating to fiduciary accounts, the subsidiary trust
22 company or national trust company:

23 (1) Is considered to have capital and surplus equal to its capital and
24 surplus plus the capital and surplus of its owning bank holding company; and

25 (2) Shall be treated as a national bank, unless:

26 (A) It is not a national bank under federal law relating to
27 national banks; and

28 (B) It has not entered into a substitution agreement with an
29 affiliated bank that is a national bank under federal law relating to national
30 banks._"

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32 SECTION 9. *Statement of Legislative Purpose. The purpose of this act*
33 *is to clarify and confirm the authority of a bank holding company acting*
34 *pursuant to Ark. Code 23-32-1901, et seq. to create, form, and establish a*
35 *subsidiary trust company or national trust company, whether organized under*

1 the laws of the United States or this state, and to substitute such subsidiary
2 trust company or national trust company as fiduciary for banks affilliated
3 with such bank holding company. Substitution of any such subsidiary trust
4 company or national trust company pursuant to Ark. Code 23-32-1901, et seq.
5 prior to the effective date of this act is hereby confirmed.

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7 SECTION 10. All provisions of this act of a general and permanent
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
9 Code Revision Commission shall incorporate the same in the Code.

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

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17 SECTION 12. All laws and parts of laws in conflict with this act are
18 hereby repealed.

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20 /s/Mahony

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22 APPROVED: 4-14-95

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