

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/21/13
A Bill

HOUSE BILL 2047

5 By: Representative McCrary
6

7 **For An Act To Be Entitled**

8 AN ACT TO AMEND THE LAWS CONCERNING THE ARKANSAS
9 DEVELOPMENT FINANCE AUTHORITY; TO ALLOW FOR THE
10 CREATION OF THE ARKANSAS CREDIT RESERVE PROGRAM; TO
11 ALLOW FOR ALTERNATIVE METHODS OF PAYING FEES UNDER
12 THE ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL
13 BUSINESS; AND FOR OTHER PURPOSES.
14

15
16 **Subtitle**

17 TO AMEND THE LAWS CONCERNING THE ARKANSAS
18 DEVELOPMENT FINANCE AUTHORITY; TO CREATE
19 THE ARKANSAS CREDIT RESERVE PROGRAM; TO
20 ALLOW ALTERNATIVE METHODS OF PAYING FEES
21 UNDER THE ARKANSAS CAPITAL ACCESS PROGRAM
22 FOR SMALL BUSINESS.
23

24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 *SECTION 1. Arkansas Code §§ 15-5-1103 and 15-5-1104 are amended to*
28 *read as follows:*

29 *15-5-1103. Definitions.*

30 *As used in this subchapter:*

31 ~~*(1) "Authority" means the Arkansas Development Finance*~~
32 ~~*Authority;*~~

33 ~~*(2)(1) "Financial institution" means all banks, savings and loan*~~
34 ~~*associations, corporations organized pursuant to*~~ *under* ~~*either the Arkansas*~~
35 ~~*Development Finance Corporation Act, § 15-4-901 et seq., or the County and*~~
36 ~~*Regional Industrial Development Company Act, § 15-4-1201 et seq., and any*~~



1 other lending institutions approved by the ~~board~~ Board of Directors of the
2 Arkansas Development Finance Authority;

3 ~~(3)~~(2) "Loss reserve account" means an account in ~~any a~~
4 financial institution ~~which~~ that is established and maintained by the
5 ~~authority~~ Arkansas Development Finance Authority for the benefit of a
6 financial institution participating in the ~~program~~ Arkansas Capital Access
7 Program for Small Business or the Arkansas Credit Reserve Program;

8 ~~(4)~~ "Program" means the Arkansas Capital Access Program for
9 Small Business;

10 ~~(5)~~(3) "Qualified business" means ~~any a~~ person conducting
11 business for profit or not-for-profit who is authorized to conduct business
12 in the State of Arkansas; and

13 ~~(6)~~(4) "Qualified loan" means a loan or portion of a loan made
14 by a financial institution to a qualified business for any business activity
15 that has its primary economic effect in Arkansas; ~~and.~~

16 ~~(7)~~ "State" means the State of Arkansas.

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18 15-5-1104. Contracts with financial institutions ~~for capital access -~~
19 Contents of contract.

20 (a) The Arkansas Development Finance Authority may contract with ~~any a~~
21 financial institution for the purpose of allowing the financial institution
22 to participate in the Arkansas Capital Access Program for Small Business or
23 the Arkansas Credit Reserve Program.

24 (b) A contract between the authority and a financial institution under
25 this section shall provide:

26 (1) For the creation of a loss reserve account by the authority
27 for the benefit of the financial institution;

28 (2) That the financial institution, a qualified business, and
29 the authority will deposit moneys to the credit of the financial
30 institution's loss reserve account when the financial institution makes a
31 qualified loan to the qualified business;

32 (3) That the authority will pay moneys in the loss reserve
33 account, not exceeding an amount equal to the total amount credited to the
34 loss reserve account, to the financial institution to reimburse the financial
35 institution for any financial loss incurred as a result of any qualified loan
36 made under the ~~program~~ Arkansas Capital Access Program for Small Business or

1 the Arkansas Credit Reserve Program;

2 (4) That the liability of the authority to the financial
3 institution under the contract is limited to the amount of money credited to
4 the loss reserve account of the financial institution; and

5 (5) For such other terms as the authority may require.

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7 SECTION 2. Arkansas Code §§ 15-5-1107 through 15-5-1110 are amended to
8 read as follows:

9 15-5-1107. Enrollment of qualified loan ~~in program~~ – Procedure – Fee –
10 Transfers to loss reserve account.

11 (a)(1) When a financial institution participates in the Arkansas
12 Capital Access Program for Small Business or the Arkansas Credit Reserve
13 Program, if the financial institution decides to enroll a qualified loan
14 under the ~~program in order~~ Arkansas Capital Access Program for Small Business
15 or the Arkansas Credit Reserve Program to obtain the protection against loss
16 provided by its loss reserve account, the financial institution shall notify
17 the Arkansas Development Finance Authority of the qualified loan within ten
18 (10) days after the qualified loan is made.

19 (2) The notification required under subdivision (a)(1) of this
20 section shall be in writing on a form prescribed by the authority.

21 (b)(1) When making a qualified loan that will be enrolled under the
22 ~~program~~ Arkansas Capital Access Program for Small Business, the financial
23 institution shall require the qualified business to which the qualified loan
24 is made to pay a fee of not less than one and one-half percent (1.5%) of the
25 principal amount of the qualified loan but not more than three and one-half
26 percent (3.5%) of the principal amount.

27 (2) When making a qualified loan that will be enrolled under the
28 Arkansas Credit Reserve Program, the financial institution shall require the
29 qualified business to which the qualified loan is made to pay a fee of not
30 less than one percent (1%) of the principal amount of the qualified loan.

31 ~~(2)(A)(3)(A)~~ The financial institution shall also pay a fee in
32 an amount equal to the fee paid by the borrower.

33 (B) However, the financial institution may collect the
34 amount of its fee from the qualified borrower.

35 (4) The authority and the financial institution shall allow a
36 qualified business to pay the fees required under this subsection using

1 sources other than sources of the qualified business.

2 ~~(3)~~(5) The financial institution shall deliver the fees
3 collected under this subsection to the authority for deposit ~~in~~ into the loss
4 reserve account for the financial institution.

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

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12 15-5-1108. Claims for reimbursement of losses – Amounts subject to
13 reimbursement.

14 (a) The Arkansas Development Finance Authority shall establish
15 procedures under which financial institutions participating in the Arkansas
16 Capital Access Program for Small Business or the Arkansas Credit Reserve
17 Program may submit claims for reimbursement for losses incurred as a result
18 of qualified loan defaults.

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

24 (c)(1) A financial institution may seek reimbursement of qualified
25 loan losses ~~prior to~~ before the liquidation of collateral from defaulted
26 qualified loans.

27 (2) The financial institution shall repay its loss reserve
28 account for any moneys received as reimbursement under this section if the
29 financial institution recovers moneys from the borrower or from the
30 liquidation of collateral for the defaulted qualified loan.

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32 15-5-1109. Rules.

33 The Arkansas Development Finance Authority may adopt such rules as it
34 considers necessary to carry out its duties, functions, and powers relating
35 to the Arkansas Capital Access Program for Small Business and the Arkansas
36 Credit Reserve Program.

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15-5-1110. Financial report of Capital Access Fund.

(a) At least ~~semiannually every calendar year~~ annually, the Arkansas Development Finance Authority shall prepare a report conforming to generally accepted accounting principles that describes the financial condition of the Capital Access Fund and describes the results and economic impact of the Arkansas Capital Access Program for Small Business and the Arkansas Credit Reserve Program.

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

SECTION 3. Arkansas Code Title 15, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

15-5-1111. Arkansas Credit Reserve Program.

The Arkansas Development Finance Authority shall establish the Arkansas Credit Reserve Program within the Arkansas Capital Access Program for Small Business.

/s/McCrary

APPROVED: 04/12/2013