

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

HOUSE BILL 1432

5 By: Representative Maloch
6 By: Senator Bookout
7
8

For An Act To Be Entitled

9 AN ACT TO REGULATE BANK MERGER TRANSACTIONS; TO
10 REQUIRE THE PLAN OF MERGER TO PROVIDE THE TERMS
11 OF THE MERGER AND THE DISPOSITION OF EACH BANK'S
12 ASSETS AND LIABILITIES; AND FOR OTHER PURPOSES.
13
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Subtitle

15 TO REGULATE BANK MERGER TRANSACTIONS AND
16 TO REQUIRE THE PLAN OF MERGER TO PROVIDE
17 THE TERMS OF THE MERGER AND THE
18 DISPOSITION OF EACH BANK'S ASSETS AND
19 LIABILITIES.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 23-48-501 is amended to read as follows:
26 23-48-501. Definitions.

27 As used in this subchapter, ~~unless the context otherwise requires:~~

28 (1) "Converting bank" means a state bank converting to a
29 national bank, a national bank converting to a state bank, or a savings and
30 loan association converting to a state bank;

31 (2) "Dissenters' rights" means the rights of dissenting
32 stockholders specified in § 23-48-506;

33 (3) "Interstate merger transaction" means:

34 (A) The merger or consolidation of banks with different
35 home states and the conversion of branches of any bank involved in the merger
36 or consolidation into branches of the resulting bank; or



1 (B) The purchase of all or substantially all of the
 2 assets, including all or substantially all of the branches and the assumption
 3 of all or substantially all of the liabilities of a bank whose home state is
 4 different from the home state of the acquiring bank;

5 ~~(3)~~(4) "Merger" includes consolidation in all sections of this
 6 subchapter except § 23-48-509;

7 ~~(4)~~(5) "Purchase or assumption" means the purchase by a state
 8 bank of over fifty percent (50%) of the assets of another depository
 9 institution, or the assumption by a state bank of over fifty percent (50%) of
 10 the liabilities of another depository institution; ~~and~~

11 (6) "Resulting bank" means:

12 (A) One (1) or more banks created from a merger or
 13 conversion; or

14 (B) The bank purchasing over fifty percent (50%) of the
 15 assets or assuming over fifty percent (50%) of the liabilities of another
 16 depository institution in a purchase or assumption transaction or an
 17 interstate merger transaction; and

18 ~~(5)~~(7) "Wholly owned Arkansas bank holding company" means a
 19 "bank holding company", as that term is defined in § 23-45-102, incorporated
 20 under the laws of the State of Arkansas, all of the outstanding shares of
 21 each class of the capital stock of which are owned by a single individual or
 22 entity.

23
 24 SECTION 2. Arkansas Code § 23-48-503 is amended to read as follows:

25 23-48-503. Merger of bank or savings and loan association into state
 26 bank.

27 (a)(1)(A) With the approval of the Bank Commissioner and the State
 28 Banking Board and after a public hearing as prescribed by the applicable law
 29 of this state, any bank, including an out-of-state bank upon compliance with
 30 § 23-48-901 et seq., or savings and loan association may be merged with a
 31 state bank ~~to result in a state bank~~ creating one (1) or more resulting
 32 banks.

33 (B) ~~provided that,~~ However, if any national bank, out-of-
 34 state bank, or savings and loan association ~~shall be~~ is involved in the
 35 merger under subdivision (a)(1)(A) of this section, there shall be compliance
 36 with the requirements of the state or federal laws applicable to the national

1 bank, out-of-state bank, or savings and loan association.

2 (2) A plan of merger involving a state bank shall provide:

3 (A) The name of each party to the merger;

4 (B) The name of each entity that will result from the
5 merger; and

6 (C) The terms and conditions of the merger. If more than
7 one (1) bank, out-of-state bank, or savings and loan association will result
8 or be created by the terms of the plan of merger, the terms and conditions of
9 the merger shall include:

10 (i) The manner and basis of allocating and vesting
11 the assets from the merger among one (1) or more of the parties;

12 (ii) The name of the party that will be obligated to
13 pay the fair value of any shares of stock of a bank that is a party to the
14 merger that is held by a stockholder that has complied with the requirements
15 of § 23-48-506 for the recovery of the fair value of the stockholder's
16 shares; and

17 (iii) Either:

18 (a) The manner and basis of allocating the
19 liabilities and obligations of each bank, out-of-state bank, or savings and
20 loan association that is a party to the merger among one (1) or more of the
21 parties; or

22 (b) Adequate provision for the payment and
23 discharge of the liabilities and obligations of each bank, out-of-state bank,
24 or savings and loan association that is a party to the merger among one (1)
25 or more of the parties.

26 ~~(2)~~(3) A bank, including an out-of-state bank, or savings and
27 loan association may merge into a state bank provided that none of the
28 Arkansas banks which are parties to the merger has a de novo charter.

29 ~~(3)~~(4) The applicant shall file an application with the
30 commissioner containing the information that the commissioner may require,
31 and if an out-of-state bank is a party to the merger, all applicable
32 provisions of § 23-48-901 et seq. and the applicable law of the home state of
33 the merging bank shall be satisfied.

34 ~~(4)~~(5) The assenting vote of a simple majority of each class of
35 voting stock of the merging banks and resulting bank shall be required for
36 the merger, provided that no vote of the shareholders of the resulting bank

1 shall be required if the number of shares to be issued in connection with the
 2 merger does not exceed twenty percent (20%) of the outstanding shares of the
 3 resulting bank prior to the merger.

4 (b) The commissioner shall provide the board with the results of the
 5 investigation of the application.

6 (c) The commissioner shall approve the application if, at the hearing,
 7 both the commissioner and the board find that:

8 (1) The proposed merger provides adequate capital structure;

9 (2) The terms of the merger agreement are fair;

10 (3) The merger is not contrary to the public interest;

11 (4) The proposed merger adequately provides for dissenters'
 12 rights; and

13 (5) The requirements of all applicable state and federal laws
 14 have been complied with.

15
 16 SECTION 3. Arkansas Code § 23-45-102(25), concerning the definition of
 17 an interstate merger transaction under The Arkansas Banking Code of 1997, is
 18 amended to read as follows:

19 (25) "Interstate merger transaction" means:

20 (A) The merger or consolidation of banks with different
 21 home states and the conversion of branches of any bank involved in the merger
 22 or consolidation into branches of the resulting bank; or

23 (B) The purchase of all or substantially all of the assets
 24 including all or substantially all of the branches and the assumption of all
 25 or substantially all of the liabilities of a bank whose home state is
 26 different from the home state of the acquiring bank, ~~provided that the~~
 27 ~~charter of the bank selling its assets is surrendered as a part of the~~
 28 ~~transaction;~~

29
 30 SECTION 4. Arkansas Code § 23-45-102(36), concerning the definition of
 31 a resulting bank under The Arkansas Banking Code of 1987, is amended to read
 32 as follows:

33 (36) "Resulting bank" means:

34 ~~(A) the bank resulting~~ One (1) or more banks created from a
 35 merger or conversion; or

36 (B) ~~the~~ The bank purchasing over fifty percent (50%) of the

1 assets or assuming over fifty percent (50%) of the liabilities of another
2 depository institution in a purchase or assumption transaction or an
3 interstate merger transaction;

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