

State of Arkansas
76th General Assembly
Regular Session, 1987
By: Representative Wilson

HOUSE BILL 1004

"THE REGIONAL RECIPROCAL BANKING ACT OF 1987"

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

SECTION 1. Title. This Act may be cited as the "Regional Reciprocal Banking Act of 1987".

SECTION 2. Definitions. For the purposes of this Act:

(a) "Acquire" means:

(1) The merger or consolidation of one Bank Holding Company with another Bank Holding Company;

(2) The acquisition by a Bank Holding Company of the direct or indirect ownership or control of voting shares of a bank or of another Bank Holding Company if, after such acquisition, such Bank Holding Company will directly or indirectly own or control more than five percent (5%) of any class of voting shares of such Bank Holding Company or bank;

(3) The direct or indirect acquisition by a Bank Holding Company of all or substantially all of the assets of a bank or of another Bank Holding Company; or

(4) Any other action that would result in the direct or indirect control by a Bank Holding Company of a bank or of another Bank Holding Company.

(b) "Arkansas bank" means a bank organized under the laws of this State or the United States and having banking offices located only in Arkansas.

(c) "Arkansas Bank Holding Company" means a Bank Holding Company:

(1) That has its principal place of business in this State;

(2) More than eighty percent (80%) of the total deposits of the bank subsidiaries of which are held by bank subsidiaries located within the Region; and

(d) "Bank" means any "insured bank" as such term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. §1813(h), or any institution eligible to become an insured bank as such term is defined therein, which, in either event:

(1) Accepts deposits that the depositor has a legal right to withdraw on demand; and

(2) Engages in the business of making commercial loans.

(e) "Banking office" means any bank, branch of a bank, or any other office at which a bank accepts deposits; however, the term banking office shall not include:

(1) unmanned automatic teller machines, point of sale terminals, or other similar unmanned electronic banking facilities at which deposits may be accepted;

(2) offices located outside the United States; or

(3) loan production offices, representative offices, or other offices at which deposits are not accepted.

(f) "Bank Holding Company" means any company which is a Bank Holding Company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841(a).

(g) "Control" has the meaning set forth in Section 2(a)(2) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841.

(h) "Department" means the Arkansas Bank Department.

(i) "Deposits" means all demand, time, and savings deposits of individuals, partnerships, corporations, the United States, and states and political subdivisions in the United States, but does not include deposits of banks or foreign governments or institutions or deposits held by foreign banking offices or corporations organized pursuant to Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§601 through 604a or 12 U.S.C. §§611 through 631. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by banks with state or federal regulatory agencies pursuant to rules established by the Department.

(j) The "principal place of business" of a Bank Holding Company is located in the state in which the total deposits of the Bank subsidiaries of the Bank Holding Company are the largest.

(k) "Region" means the states of Arkansas, Tennessee, Missouri,

Mississippi, Texas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

(l) "Regional bank" means a bank organized under the laws of the United States or of one of the states in the Region other than Arkansas and having banking offices located only in states within the Region.

(m) "Regional Bank Holding Company" means a Bank Holding Company other than an Arkansas Bank Holding Company; and

(1) that has its principal place of business in a state within the Region;

(2) more than eighty percent (80%) of the total deposits of the bank subsidiaries of which are held by Regional Bank Subsidiaries located within the region;

(3) which is not controlled by a Bank Holding Company other than a Regional Bank Holding Company; and

(4) which is neither a foreign bank as defined in the International Banking Act of 1978, 12 U.S.C. §3101(7) nor controlled by such a foreign bank.

(n) "Subsidiary" means that which is set forth in Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1841.

SECTION 3. Acquisition of Control.

(a) A Regional Bank Holding Company seeking to acquire an Arkansas Bank or Arkansas Bank Holding Company shall file with the Department an application containing information satisfactory to the Department:

(1) that the acquisition will promote the safety and soundness of the institution to be acquired;

(2) that the Banks already controlled by the applicant adequately meet the convenience and needs of the communities served by them in accordance with the federal Community Reinvestment Act of 1977;

(3) that the applicant intends to adequately meet the convenience and needs of the communities served by the Arkansas bank or Arkansas Bank Holding Company proposed to be acquired in accordance with the federal Community Reinvestment Act of 1977; and

(4) that addresses the issue of how the transaction will bring net new benefits to Arkansas. The application shall include, but not be limited to, information which addresses the Regional Bank Holding

Company's initial capital investments, loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services which will be offered. Such information required by this subparagraph (a)(4) shall specifically address the steps that will be taken to meet the credit needs of individuals and small businesses in the communities affected by the transaction.

(b) With respect to subparagraphs (2) and (3) of paragraph (a) of this section, the application shall include, where applicable, information on:

(1) activities conducted by the bank to ascertain the credit needs of its community, including the extent of the banks' efforts to communicate with members of its community regarding the credit services being provided by the bank;

(2) the extent of the bank's marketing and special credit-related programs to make members of the community aware of the credit services offered by the bank;

(3) the extent of participation by the bank's board of directors in formulating the bank's policies and reviewing its performance with respect to the purposes of the federal Community Reinvestment Act of 1977;

(4) any practices intended to discourage applications for types of credit offered by the bank;

(5) the geographic distribution of the bank's credit extensions, credit applications and credit denials;

(6) evidence of prohibited discriminatory or other illegal credit practices;

(7) the bank's record of opening and closing offices and providing services at offices;

(8) the bank's participation, including investments, in local community development and redevelopment projects or programs;

(9) the banks' originations of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community or the purchase of such loans originated in its community;

(10) the bank's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses or small farms; and

(11) the bank's ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.

(c) Information required by subparagraph (4) of paragraph (a) of this section shall be updated in annual reports submitted to the Department. Such annual reports shall detail the Regional Bank Holding Company's compliance with the policies and plans contained in the application, the impact of such policies and plans on bringing net new benefits to Arkansas and shall be in such form and otherwise contain such additional information as the Department may require.

(d) A Regional Bank Holding Company is authorized to acquire an Arkansas Bank or Arkansas Bank Holding Company upon approval by the Department, which approval:

(1) determines that the application submitted pursuant to paragraph (a) of this Section is complete and contains information adequately responding to the topics set out in paragraphs (a) and (b) of this Section;

(2) determines that the laws of the State in which the Regional Bank Holding Company has its principal place of business permit Arkansas Bank Holding Companies to acquire Banks and Bank Holding Companies in that state;

(3) determine that the laws of the State in which the Regional Bank Holding Company has its principal place of business permit the Regional Bank Holding Company to be acquired by the Arkansas Bank Holding Company, or Arkansas Bank, sought to be acquired. For the purposes of this subsection, the Arkansas Bank shall be considered as if it were an Arkansas Bank Holding Company;

(4) determines that the Arkansas Bank sought to be acquired has been in existence and continuously operating for more than ten (10) years or that all of the bank subsidiaries of the Arkansas Bank Holding Company sought to be acquired have been in existence and continuously operating for more than ten (10) years; and

(5) determines that notice of intent to acquire has been published in a newspaper of general paid circulation in the county or counties in which the Bank to be acquired is located, or that a notice of intent to acquire has been mailed via certified mail to each person owning stock in

the bank to be acquired.

(6) makes the acquisition subject to any conditions, restrictions, and requirements that would apply to the acquisition by an Arkansas Bank Holding Company of a Bank or Bank Holding Company in the State where the Regional Bank Holding Company has its principal place of business, which conditions, restrictions, and requirements would not apply to acquisitions by Bank Holding Companies all of whose bank subsidiaries are located in that State.

(e) A Bank Holding Company controlling an Arkansas Bank or Arkansas Bank Holding Company prior to the date of enactment of this Act or a Regional Bank Holding Company having an Arkansas Bank subsidiary or Arkansas Bank Holding Company subsidiary which was not acquired pursuant to the provisions of Sections 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. §1730a(m) or 12 U.S.C. §1823(f), or was not acquired in the regular course of securing or collecting a debt previously contracted in good faith as provided in Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. §1842(a), is authorized to acquire an Arkansas Bank or Arkansas Bank Holding Company pursuant to the laws and rules applicable to acquisitions of Arkansas Banks and Arkansas Bank Holding Companies by a Bank Holding Company all of whose Bank subsidiaries are located in this State. Control of a Bank or corporation organized under the laws of the United States or of any State and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§601 through 604a or 12 U.S.C. §§611 through 631, shall not constitute control of an Arkansas Bank for the purposes of this paragraph. An acquisition authorized by this paragraph shall not require the approval of the Department as provided in paragraph (d).

(f) Nothing in this section shall prohibit the acquisition by a Regional Bank Holding Company of all or substantially all of the shares of a Bank organized solely for the purpose of facilitating the acquisition of a Bank which has been in existence and continuously operated as a Bank for more than five (5) years, if the acquisition has otherwise been approved pursuant to this Act.

SECTION 4. Prohibited Transactions; Divestiture.

(a) Except as expressly permitted by federal law, no Bank Holding Company that is not an Arkansas Bank Holding Company or is not a Regional Bank

Holding Company shall acquire an Arkansas bank or Arkansas Bank Holding Company.

(b) An Arkansas Bank Holding Company or Regional Bank Holding Company that ceases to be an Arkansas Bank Holding Company or Regional Bank Holding Company, as defined in this Act, shall within two (2) years divest itself of all Arkansas Banks and Arkansas Bank Holding Companies. However, a Regional Bank Holding Company or Arkansas Bank Holding Company shall not be required to divest its Arkansas Banks or Bank Holding Companies because of:

(1) Its acquisition of institutions in another state not within the Region, if such acquisition has been consummated pursuant to the provisions of Section 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. §1730a(m) or 12 U.S.C. §1823(f);

(2) Its acquisition of a Bank having banking offices in a State other than within the Region, if such acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the federal Bank Holding Company Act of 1956, as amended 12 U.S.C. §1842(a), if the Bank or Bank Holding Company divests the securities or assets acquired within two (2) years of the date of acquisition;

(3) Its acquisition of a Bank or corporation organized under the laws of the United States or of any state and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§601 through 604a or 12 U.S.C. §§611 through 631, or a Bank or Bank Holding Company organized under the laws of a foreign country that is principally engaged in business outside the United States and which either has no banking office in the United States that are engaged only in business activities permissible for a Bank or corporation operating under Sections 25 or 25(a) of the Federal Reserve Act, as amended; or

(4) An increase in deposits in bank subsidiaries not within the region, provided that such increase is not the result of acquisition of a Bank or Bank Holding Company.

(c) The Department shall have the power to enforce the prohibition of this Act through the imposition of fines and penalties, the issuance of cease and desist orders, and such other remedies as are provided by law.

SECTION 5. Applicable Law. Any Regional Bank Holding Company which

controls an Arkansas Bank or an Arkansas Bank Holding Company shall be subject to such laws of this State and such rules of its agencies relating to the acquisition, ownership, and operation of Banks and Bank Holding Companies as are applicable to Arkansas Bank Holding Companies.

(a) The Department shall administer and carry out the provisions of this Act and may issue such rules, regulations and orders as may be necessary to discharge this duty and to prevent evasions of this Act. Any Regional Bank Holding Company that controls an Arkansas Bank shall be subject to such rules, regulations, and orders.

(b) Any Regional Bank Holding Company that has an Arkansas bank subsidiary and that is not organized under the laws of this state shall: (i) qualify to do business in this State, (ii) advise the Department of the location of its registered office within this State and the name of its initial registered agent at such location, (iii) agree to be bound by all the provisions of this Act, and (iv) promptly advise the Department of any changes in its registered office and registered agent.

(c) The Department may enter into cooperative and reciprocal agreements with the bank regulatory authorities of any State for the periodic examination of Bank Holding Companies and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Department may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this Act and assure compliance with the laws of this state.

(d) Any Regional Bank Holding Company or any subsidiary thereof which willfully violates any provision of this Act or any regulation or order issued by the Department pursuant thereto shall upon conviction be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) or imprisoned not more than one (1) year, or both.

SECTION 6. Subsection D. of Section 3 of Act 128 of 1983, as amended, the same being Arkansas Statutes 67-2110 D. is hereby amended to read as

follows:

"D. 'De novo charter' means a charter for a bank for which application was filed after December 31, 1982, and which has been in existence for less than ten (10) years, but it does not include a charter which is issued in connection with the acquisition of assets and liabilities from a predecessor financial institution."

SECTION 7. Repealer. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 8. Severability. The provisions of this Act shall be deemed to be severable. If any one or more provisions of this Act, or the application thereof to any person or circumstance, shall be held by any court of competent jurisdiction to be invalid or to be inapplicable such holding shall not affect the validity or applicability of the remainder of the provisions of this Act.

SECTION 9. Effective Date. This Act shall take effect July 1, 1987, or on the date on which the State or States having twenty percent (20%) or more of the total deposits of Banks within the Region, excluding Arkansas, have enacted and have in effect statutes which permit Arkansas Bank Holding Companies to acquire Banks and Bank Holding Companies in such State, whichever occurs sooner. For purposes of this Act, the total deposits of Banks within the Region shall be determined by reference to the Spring 1987 issue of Polk's World Bank Directory, published by R. L. Polk and Company.

