

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 2/2/87

HOUSE BILL 1281

By: Representative D. Roberts

"AN ACT TO AMEND SECTION 11 OF ACT 111 OF 1941 [ARK. STATS. 67-1011] RELATING TO THE LIQUIDATION OF AN INDUSTRIAL LOAN INSTITUTION; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 11 of Act 111 of 1941 [Ark. Stats. 67-1011] is hereby amended to read as follows:

"Section 11. STATE BANK COMMISSIONER MAY TAKE CHARGE-WHEN. A. The State Bank Commissioner may forthwith take possession of the business and property of any 'industrial loan institution' to which this Act is applicable whenever it shall appear that such 'industrial loan institution':

1. Has violated its charter or any laws applicable thereto.
2. Is conducting its business in an unauthorized or unsafe manner.
3. Is in an unsafe and unsound condition to transact its business.
4. Has an impairment of its capital stock.
5. Has refused to pay its certificates of indebtedness or investment contracts, or agreements to pay in accordance with the terms upon which such certificates of indebtedness, or investment contracts or agreements to pay were issued.
6. Has become otherwise insolvent.
7. Has neglected or refused to comply with the terms of duly issued lawful order of the State Bank Commissioner.
8. Has refused, upon proper demand to submit its records, affairs, and concerns for inspection and examination to a duly appointed or authorized examiner of the State Bank Commissioner.

B. On taking charge of the property and affairs of any bank the Commissioner shall forthwith give notice of such fact to all corporations,

firms, individuals, and public or quasi public bodies, holding any of its assets. No corporation, firm, individual, or public or quasi public body, whether within or without this State, shall have a lien or charge against any of the assets for any payment, advance or clearance, or for any liability incurred, after such taking charge. The Commissioner may permit the resumption of business by any 'industrial loan institution' of which charge has previously been taken upon such conditions in each instance as may be approved by him. All laws setting forth the contingencies for the Commissioner taking charge of 'industrial loan institutions', are directory and discretionary, and not mandatory, and the Commissioner in the exercise in any instance of his discretion in respect thereof shall take into consideration, and give weight according to his best judgment to, the various factors involved or to be affected thereby, including the interest of the present and prospective depositors of the respective such 'industrial loan institution', of the locality wherein it has its place of business, and of other 'industrial loan institutions' in the same or other localities of this State, and the local or general economic or financial conditions at the time being prevailing. Upon taking charge of any 'industrial loan institution' the Commissioner shall forthwith be vested at law and in equity with the sole, exclusive and unconditional ownership and title in himself, his successors in office and assigns, of all the property and assets of said 'industrial loan institution', whether the same are situated within this State or elsewhere, such ownership and title in the Commissioner to be free from and unaffected by any levy, judgment, attachment or other lien obtained thereafter as against the property of the said 'industrial loan institution' through legal proceedings, and free from and unaffected by any equity arising in favor of or obtained by third persons after the Commissioner has taken charge as aforesaid, but subject to any and all equities in favor of third persons which have arisen or been obtained as against any of said property or assets prior to the taking charge thereof by said Commissioner. All levies, judgments, attachments, or other liens obtained through legal or equitable proceedings in this State or elsewhere as against any 'industrial loan institution' organized under the laws of this State, or any of its property, at any time within thirty (30) days prior to the taking charge by the Commissioner, shall be null and void in case the Commissioner takes charge of the property and affairs of said 'industrial loan institution', and the property affected by such levy, judgment, attachment or

other liens so obtained shall be forthwith wholly discharged and released from the same, and shall pass to the Commissioner as a part of the estate of said 'industrial loan institution'; provided, that nothing herein contained shall have the effect to impair or destroy the title obtained by such levy, judgment, attachment or other lien of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry of the imminence of such taking charge by the Commissioner. Upon the taking charge of any 'industrial loan institution' the Commissioner shall proceed to liquidate its affairs to institute, maintain and defend suit and other proceedings in the courts of this State or elsewhere, to enforce in this State or elsewhere if necessary the liabilities of the stockholders, and, upon the order hereby empowered to be made, of the chancery court of the county wherein the said 'industrial loan institution' had its place of business, or the chancellor thereof in vacation, to sell, compound or exchange any or all bad or doubtful debts of the said estate, and, on like order, to sell or exchange any or all of the property, real, personal or mixed, of the said estate, in such manner and upon such terms and considerations as to any such sale, composition or exchange as specified in the said order. Any such sale shall be public or private as specified in the order therefor, and any such sale or exchange of real property shall be subject to confirmation respectively by the said court or chancellor.

C. The Bank Commissioner may, under his hand and official seal, appoint one (1) or more special deputy commissioners as agent or agents to assist him in the duty of liquidation and distribution of the assets of any insolvent 'industrial loan institution'; the certificate of appointment to be in duplicate, one (1) copy to be filed in the office of the Commissioner and the other copy in the office of the clerk of the chancery court of the county in which such 'industrial loan institution' or trust company was located. The Commissioner may from time to time authorize a special deputy to perform such duties connected with such liquidation and distribution as he may deem proper.

D. He may employ such counsel and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets, and may retain such of the officers or employees as he may deem necessary. The commissioner shall cause notice to be given by advertisement in such newspapers as he may direct, weekly for four (4) consecutive weeks, calling on all persons who may have claims against the said estate to present the

same to him and make legal proof thereof at a place and at a time to be fixed by the said commissioner in said notice. If the commissioner doubts the justice or the validity of any claim he may reflect the same and serve notice of such rejection upon the claimant either by depositing the same in the mail or personally. An action upon a claim so reflected must be brought within six (6) months after such service. The commissioner may apply for the declaration of a first dividend to creditors at any time after the expiration of said published notice and of said further ten (10) days' notice of creditors.

E. Classification of creditors of 'industrial loan institution' in hands of commissioner.--All creditors of an 'industrial loan institution' of which the Commissioner has taken charge are classifiable either as secured creditors, prior creditors or general creditors. A secured creditor shall be a creditor, (1) who has security for his debt upon the property of the said 'industrial loan institution' of a nature to be assignable under the Act, or (2), who owns such a debt for which some endorser, surety or other person secondarily liable for said 'industrial loan institution' has such security upon the said 'industrial loan institution's' property, to the extent in both instances of the value of such security. The value of the security of a secured creditor shall be determined by converting the same into money (1) according to the terms of the agreement pursuant to which such security was delivered to such creditor or in the absence of applicable terms of such agreement (2) by such creditor and the Commissioner, by agreement, arbitration, compromise, of litigation, as the Chancery Court may direct. The expense of such conversions by such creditor and the Commissioner shall be borne as the said Court may direct. A prior creditor shall be (1) an employee, laborer or clerk of said 'industrial loan institution', as and to the extent as provided by this Act, or (2) the Commissioner as to deposits made by him in said 'industrial loan institution' as depository for the moneys of another 'industrial loan institution' or bank of which he has taken charge, to the extent of such deposits, or (3) a prior creditor who is such by virtue of an Act of Congress applicable to the said 'industrial loan institution', as and to the extent as provided by said Act, or, to the extent respectively as in this Section hereinafter provided. (4) the owner of a special deposit expressly made as such in said 'industrial loan institution', evidenced by a writing signed by said 'industrial loan institution' at the time thereof, and which it was not permitted to use in the course of its regular business, (5)

the beneficiary of an express trust, and distinguished from a constructive trust, a resulting trust or a trust ex maleficio of which the said 'industrial loan institution' was the trustee, and which was evidenced by a writing signed by said 'industrial loan institution' at the time thereof, (6) the owner of the proceeds of a collection made by said 'industrial loan institution' and not remitted by it, or of which, its remittance has not been paid, when such collection was made otherwise than by honoring a check or other order upon said 'industrial loan institution' or by a charge against the account of the depositor of said 'industrial loan institution', and the said collection has had a distinctive identity in the hands of said 'industrial loan institution', has actually increased its cash assets, and has not resulted in merely shifting its liability upon its books from one (1) of its creditors to another or new creditor and (7) the owner of a remittance of the said 'industrial loan institution', the proceeds of a collection made by said 'industrial loan institution' by honoring a check or other upon itself or by a charge against the account of its depositor, although the said collection has not had a distinctive identity in the hands of said 'industrial loan institution', has not actually increased its cash assets and has resulted in merely shifting its liability upon its books from one (1) of its creditors to another or new creditor, in instances where the said remittance has been presented with due diligence for payment to said 'industrial loan institution' or its drawee and is not paid, and where the instrument collected cannot be returned by the Commissioner to the person who had transmitted the same to said 'industrial loan institution' for collection, the said instrument having been surrendered by said 'industrial loan institution' for collection in such manner prior to the Commissioner taking charge, it being hereby made the duty of said Commissioner to reverse the entries upon the books of said 'industrial loan institution' as to all collections made in such manner in all instances where the said unpaid remittance has been so presented with due diligence and where the said instrument remains in said 'industrial loan institution' unsurrendered, by which said reversal of entries the said instrument shall be deemed to be from its inception unpaid, and thereupon the Commissioner shall return the said instrument to the person who transmitted the same to said 'industrial loan institution', which return shall be in extinguishment to the extent thereof of the said remittance, it being hereby made unlawful for any officer or agent of any 'industrial loan institution' organized under the

laws of this State to surrender any such instrument for the purpose of enabling a preference to be secured thereby under any of the provisions hereof, irrespective of any knowledge of or participation in such purpose on the part of the person claiming or receiving such preference. All prior creditors as in this Section hereinabove defined, except only employees, laborers, and clerks of said 'industrial loan institution' and the Commissioner and said prior creditors under an act of Congress, who shall be paid in full out of any assets of said 'industrial loan institution' available therefor after the payment of the expenses of administrative, shall have such priority to the extent that they respectively may specifically identify their property in its original or traceable form into the hands of the Commissioner, and, if unable so to identify such property, to the extent that the assets in the hands of the Commissioner, in the form of the lowest amount of cash on hand, exclusive of deposits in other 'industrial loan institutions' and all other assets, remaining in said 'industrial loan institution' continuously after their said respective priorities arose, where necessarily increased by such property, such cash on hand being deemed to have been so increased to the extent of any priorities which may be acquired under classification number (7) as hereinabove set forth, and if such cash on hand is not sufficient to pay all such prior creditors in full the same shall be prorated among them. Beyond the extent of the priority of any such prior creditor respectively as aforesaid and insofar as his priority to such extent cannot be paid in full, but not otherwise, the said creditors shall be general creditors of the 'industrial loan institution'. All creditors not in this Section hereinabove classed as secured or prior creditors of said 'industrial loan institution', including the State of Arkansas and any of its subdivisions, shall be general creditors thereof. Creditors whose claims are unliquidated may liquidate the same in such manner as the said court may direct."

SECTION 2. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 3. Emergency. It is hereby found and determined by the General Assembly that present law does not provide an adequate procedure for the liquidation of an industrial loan institution; that this Act authorizes the Bank Commissioner to liquidate industrial loan institutions; that until this

Act becomes effective there will be no adequate mechanism for providing for such liquidation, and therefore this Act should go into effect immediately. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/ Dave Roberts

