

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 552

By: Senators Bookout and Gibson

"AN ACT AMENDING ACT NO. 349 OF THE ACTS OF ARKANSAS OF 1953, AS AMENDED BY ACT NO. 869 OF THE ACTS OF ARKANSAS OF 1983, ACT NO. 605 OF THE ACTS OF ARKANSAS OF 1985, AND ACT NO. 995 OF THE ARKANSAS ACTS OF 1985; AMENDING ACT NO. 869 OF THE ACTS OF ARKANSAS OF 1983; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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

SECTION 1. Section 7 of Act No. 349 of the Acts of Arkansas of 1953, as amended by Section 7 of Act No. 869 of the Acts of Arkansas of 1983, Section 1 of Act No. 605 of the Acts of Arkansas of 1985, and Section 1 of Act No. 995 of the Acts of Arkansas of 1985, is hereby revised and amended to read as follows:

"SECTION 7. DISSENTING STOCKHOLDERS. The owner of shares of a state bank which were voted against a merger, consolidation or conversion, or who has given notice in writing to the bank at or prior to the meeting of the stockholders approving the same that he dissents from the merger, consolidation or conversion, shall be entitled to receive in cash the value of the shares held by him, if the merger, consolidation or conversion is consummated and if such dissenting stockholder has delivered to the resulting state or national bank at any time within twenty (20) days after the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded a written demand for payment stating the number and the class of shares owned by such dissenting stockholder. Any dissenting stockholder failing to make such a demand shall be bound by the terms of the merger, consolidation or conversion.

The resulting state or national bank shall fix an amount which it con-

siders to be not more than the fair market value of the shares of the merging, consolidating or converting bank as of the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded which it will offer to pay dissenting stockholders entitled to payment in cash. Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his shares, the resulting state or national bank shall give such dissenting stockholder notice of the amount it will pay for dissenting shares. Any dissenting stockholder may agree to accept such amount in lieu of pursuing the appraisal remedy set forth below by delivering to the resulting state or national bank within thirty (30) days after the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded a written acceptance of such offer.

The value of shares held by dissenting stockholders entitled to receive in cash the value of the shares held by them who do not accept the offer of the resulting state or national bank within the thirty-day period set forth above shall be determined as of the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded by three (3) appraisers one (1) of which shall be selected by such dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by such dissenting stockholders, one (1) of which shall be selected by the board of directors of the resulting state or national bank, and the third of which shall be selected by the two (2) so chosen. The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern; provided, however, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided herein, such stockholder may within five (5) days after being notified of the appraised value of his shares appeal to the State Bank Commissioner, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If within ninety (90) days after the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded, for any reason, one (1) or more of the appraisers is not selected as herein provided or the appraisers fail to determine the value of dissenting shares, the State Bank Commissioner shall, upon written request of any interested party made within five (5) days after the expiration of such ninety-day period, cause an appraisal to be made, which shall be final and binding upon all parties.

The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders, the expenses of the appraiser selected by the board of directors of the resulting state or national bank shall be paid by the resulting bank, and the expenses of the third appraiser shall be paid by and pro-rated among the dissenting stockholders and the resulting bank in such a manner as is determined by the State Bank Commissioner to be fair and equitable under the circumstances. If the State Bank Commissioner is required to make a reappraisal, the expenses of the State Bank Commissioner in making the reappraisal shall be paid by and pro-rated among the dissenting stockholders and the resulting bank in such a manner as is determined by the State Bank Commissioner to be fair and equitable under the circumstances. If the State Bank Commissioner is required to make a reappraisal, the expenses of the State Bank Commissioner in making the reappraisal shall be paid by the appellant.

If within ninety (90) days after the date on which the stockholders' meeting authorizing the merger, consolidation or conversion was concluded, for any reason, one (1) or more of the appraisers is not selected as provided above or the appraisers fail to determine the value of dissenting shares, and if no written request to value the dissenting shares is filed with the State Bank Commissioner within five (5) days after the expiration of such ninety-day period, then all dissenting stockholders who have failed to accept the offer of the resulting state or national bank within the thirty-day period prescribed above shall be bound by the terms of the merger, consolidation or conversion.

The amount due a dissenting stockholder under an accepted offer of the resulting state or national bank or under the appraisal shall constitute a debt of the resulting state or national bank which must be paid, if and when the merger, consolidation or conversion is consummated, simultaneously with the surrender by the dissenting stockholder of his shares.

Within ten (10) days after the merger, consolidation or conversion is consummated, the resulting state or national bank shall give written notice thereof to each dissenting stockholder who is entitled to receive in cash the fair value of his shares.

The plan of merger, consolidation or conversion shall provide for payment of or the manner of disposing of any shares of the resulting bank not taken by dissenting stockholders."

SECTION 2. Sections 1 through 7 of Act No. 869 of the Acts of Arkansas of 1983 are hereby revised and amended to read as follows:

"SECTION 1. REORGANIZATION OF A STATE BANK THROUGH A PLAN OF EXCHANGE - DEFINITIONS. The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them in this Section, except where the context may clearly indicate a different meaning:

(a) "State Bank" means any bank, banking association, trust company, savings bank (other than a mutual savings bank) or other banking institution which is engaged in the business of receiving deposits and is under the supervision of the State Bank Commissioner.

(b) "Bank Holding Company" means any business corporation organized under the laws of Arkansas or authorized to do business in Arkansas which at the time of consummation of a plan of exchange pursuant to this Act is authorized by applicable law to operate as a bank holding company.

(c) "Commissioner" means the State Bank Commissioner.

SECTION 2. PERMISSIBLE CONSIDERATION FOR EXCHANGE OF SHARES; APPROVAL OF COMMISSIONER.

(a) A State Bank may adopt a plan of exchange of all of the outstanding capital stock held by its stockholders for the consideration herein designated to be paid or provided by a Bank Holding Company which acquires such stock, in the manner provided in this Act by complying with the provisions of this Act, subject to subsections (b), (c), (d) and (e) below. The plan of exchange may provide that the Bank Holding Company, as the acquiring person, as consideration for the stock of the State Bank may:

- (i) transfer shares of its capital stock; or
- (ii) transfer other securities issued by it; or
- (iii) pay cash; or
- (iv) pay or provide other consideration; or
- (v) pay or provide any combination of the foregoing types of consideration.

(b) No such plan of exchange shall be effectuated unless in advance thereof the plan has been filed with the Commissioner and approved in writing by him after notice and a hearing thereon. The Commissioner shall give such

approval within a reasonable time after the hearing unless he finds the plan:

- (i) is contrary to law; or
- (ii) is inequitable to the stockholders of the State Bank involved; or
- (iii) would not provide a satisfactory means for disposing of shares of the State Bank resulting from dissenting stock holders; or
- (iv) would substantially reduce the security of or service to be rendered to depositors or other customers of the State Bank or any affiliate bank of the State Bank or the Bank Holding Company .

(c) No director, officer, agent or employee of any party to a plan of exchange shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein, except as set forth in the plan of exchange.

(d) If the Commissioner does not approve the plan of exchange, the Commissioner shall notify the State Bank in writing specifying the reasons therefor.

(e) For every plan of exchange filed with the Commissioner under subsection (b) above, there shall be paid to the Commissioner by the State Bank involved a filing fee equal to one-tenth of one percent (1/10 of 1%) of the paid-up capital stock of the State Bank; provided, however, the fee shall in no case be less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000.00). In addition, the State Bank shall pay all expenses and costs of the Commissioner incurred in connection with the plan of exchange and the hearing thereon, including, but not limited to, travel expenses, mail and delivery charges, copying costs and court reporters' fees. The Commissioner may by order reduce or waive the filing fee, but not the payment of the expenses and costs of the Commissioner, if the Commissioner determines that the fee is excessive under the circumstances.

SECTION 3. POWERS NOT ENLARGED. Nothing in this Act shall be construed to authorize any company to engage in any kind of banking business not authorized by its Articles of Agreement or any domestic, foreign or alien company to engage in any kind of banking business in this State not covered by its certificate of authority to do business in this State.

SECTION 4. ADOPTION OF PLAN OF EXCHANGE; APPROVAL OF STOCKHOLDERS; FILING; ABANDONMENT. (a) The directors, consisting of at least a majority, of a State Bank and a Bank Holding Company as desire to adopt a plan of exchange pursuant to this Act shall adopt a plan of exchange signed by them under their respective corporate seals which shall prescribe and set forth the terms and conditions of the plan of exchange, the mode of carrying the same into effect, provisions with respect to abandonment, the effective date of the exchange of shares or the method of determination thereof, such facts as are deemed applicable among those necessary to be set out in Articles of Agreement, as provided in Section 13 of Ark. Acts 1913, No. 113, as amended [§67-303], if any, the manner and basis of any cash payment or issuance or exchange of shares of stock or other securities of the Holding Company for shares of the State Bank, and such other details and provisions as are deemed necessary or desirable.

(b) The plan of exchange shall be submitted to the stockholders of the State Bank to be acquired at a meeting thereof called for that purpose. Notice shall be given of the time, place and purpose of the meeting to each stockholder or member of record, whether entitled to vote or not. At such meeting, the plan of exchange shall be considered by the stockholders entitled to vote thereon and a vote by ballot, in person or by proxy, shall be taken for the adoption or rejection of the same. Unless otherwise provided in the State Bank's Articles of Incorporation for voting on a plan of exchange, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least two-thirds (2/3) of the outstanding shares of the State Bank entitled to vote thereon; provided, however, if any class of shares of the State Bank is entitled to vote as a class thereon, the plan of exchange shall be approved upon receiving the affirmative vote of the holders of at least two-thirds (2/3) of (i) the outstanding shares of each class of shares entitled to vote as a class thereon and (ii) the total outstanding shares entitled to vote thereon. If the plan of exchange is approved by the stockholders of the State Bank, that fact shall be certified in the plan by the Secretary or Assistant Secretary of the State Bank under the seal thereof, and the plan so adopted and certified shall be signed by each party to the plan of exchange under its seal and the hands of its President or a Vice-President and its Secretary or an Assistant Secretary and acknowledged

before an officer authorized by law to take acknowledgment of deeds.

(c) The plan, adopted and certified as hereinabove provided, shall be filed in duplicate originals with the Commissioner prior to the hearing thereon and within ten (10) days following the approval of stockholders and after approval thereof by the Commissioner as provided in Section 2 of this Act shall be taken and deemed to be the plan of exchange of the parties thereto. A copy of the plan of exchange certified by the Commissioner and reciting thereon the approval of the Commissioner shall be evidence of the performance of all antecedent acts and conditions necessary to such plan of exchange. One (1) of such duplicate originals bearing the file marks of the Commissioner shall be filed for record in the office of the Clerk of the County Court of the County in which the principal office or place of business of the State Bank adopting such plan of exchange is located within ten (10) days following the effective date of the exchange of shares.

(d) Any plan of exchange may be abandoned in conformity with the terms thereof, as approved by the Commissioner, provided in such event due notice of such abandonment shall be forthwith transmitted to the stockholders of the State Bank and to the Secretary of the Bank Holding Company which are parties thereto within ten (10) days of such abandonment in a manner and form as prescribed or approved by the Commissioner.

SECTION 5. EFFECT OF EXCHANGE OF SHARES UNDER PLAN OF EXCHANGE. (a) When the plan of exchange, as filed with the Commissioner and approved by the Commissioner under Section 2 of this Act, becomes effective in accordance with the terms thereof, the exchange provided for therein shall be deemed to have been consummated and each stockholder of the State Bank acquired shall thereupon cease to be a stockholder of such State Bank. The ownership of all shares of the issued and outstanding stock of such State Bank, except shares payment of the value of which is required to be made under Section 7 of this Act (hereinafter sometimes referred to as "dissenting shares"), shall thereupon vest in the Bank Holding Company as the acquiring person automatically without any physical transfer or deposit of certificates representing such shares. All dissenting shares shall be considered authorized but no longer outstanding shares of the State Bank and may be disposed of in accordance with the provisions of the plan of exchange or as otherwise approved by the Commissioner. The Bank Holding Company thereupon shall become the sole

stockholder of the State Bank and shall be subject to all of the duties and liabilities, to the extent provided by law, of a stockholder of a State Bank organized under the laws of this State.

(b) Certificates representing shares of the State Bank prior to the plan of exchange becoming effective, except certificates representing dissenting shares, shall, after the plan of exchange becomes effective, represent (i) shares of the capital stock or other securities of the Bank Holding Company to be issued in exchange for shares of the State Bank and (ii) the right, if any, to receive cash or other consideration upon such terms as are specified in the plan of exchange. However, the plan of exchange may specify that all such certificates shall, after the plan of exchange becomes effective, represent only the right to receive shares as stock or other securities issued by the Bank Holding Company, cash or a combination thereof upon such terms as are specified in the plan of exchange.

SECTION 6. CORPORATIONS UNDER A PLAN OF EXCHANGE TO BE SEPARATE. The State Bank acquired under a plan of exchange and the acquiring Bank Holding Company shall, in all respects, remain separate and distinct entities with neither entity having any liability to the creditors or depositors, if any, or stockholders of the other or for any acts or omissions of the officers, directors, stockholders or representatives of the other (other than such obligations as may be expressly provided for in the plan of exchange).

SECTION 7. DISSENTING STOCKHOLDERS. (a) The owner of shares of a State Bank which were voted against a plan of exchange, or who has given notice in writing to the State Bank at or prior to the meeting of the stockholders approving the same that he dissents from the plan of exchange, shall be entitled to receive in cash the value of the shares held by him, if the plan of exchange is consummated and if such dissenting stockholder has delivered to the State Bank at any time within twenty (20) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded a written demand for payment stating the number and the class of shares owned by such dissenting stockholder. Any dissenting stockholder failing to make such a demand shall be bound by the terms of the plan of exchange.

(b) The State Bank shall fix an amount which it considers to be not more than the fair market value of the shares of the State Bank as of the date on



which the stockholders' meeting authorizing the plan of exchange was concluded which it will offer to pay dissenting stockholders entitled to payment in cash. Upon receipt from a dissenting stockholder of a written demand for payment in cash of the fair value of his shares the State Bank shall give such dissenting stockholder notice of the amount it will pay for dissenting shares. Any dissenting stockholder may agree to accept such amount in lieu of purchasing the appraisal remedy set forth below by delivering to the State Bank within thirty (30) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded a written acceptance of such offer.

(c) The value of shares held by dissenting stockholders entitled to receive in cash the value of the shares held by them who do not accept the offer of the State Bank within the thirty-day period set forth above shall be determined as of the date on which the stockholders' meeting authorizing the plan of exchange was concluded by three (3) appraisers, one (1) of which shall be selected by such dissenting stockholders by the vote of a majority of the aggregate number of dissenting shares held by such dissenting stockholders, one (1) of which shall be selected by the board of directors of the State Bank, and the third of which shall be selected by the two (2) so chosen. The valuation agreed upon by any two (2) of the three (3) appraisers thus chosen shall govern; provided, however, if the value so fixed shall not be satisfactory to any dissenting stockholder who has requested payment as provided herein, such stockholder may within five (5) days after being notified of the appraised value of his shares appeal to the Commissioner, who shall cause a reappraisal to be made, which shall be final and binding as to the value of the shares of the appellant. If within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as herein provided or the appraisers fail to determine the value of dissenting shares, the Commissioner shall, upon written request of any interested party made within five (5) days after the expiration of such ninety-day period, cause an appraisal to be made, which shall be final and binding upon all parties.

(d) The expenses of the appraiser selected by the dissenting stockholders shall be paid by the dissenting stockholders, the expenses of the appraiser selected by the board of directors of the State Bank shall be paid by the State Bank, and the expenses of the third appraiser shall be paid by and pro-rated among the dissenting stockholders and the State Bank in such

manner as is determined by the Commissioner to be fair and equitable under the circumstances. If the Commissioner is required to make the appraisal, the expenses of the Commissioner in making the appraisal shall be paid by and pro-rated among the dissenting stockholders and the State Bank in such manner as is determined by the Commissioner to be fair and equitable under the circumstances. If the Commissioner is required to make a reappraisal, the expenses of the Commissioner in making the reappraisal shall be paid by the appellant.

(e) If within ninety (90) days after the date on which the stockholders' meeting authorizing the plan of exchange was concluded, for any reason, one (1) or more of the appraisers is not selected as provided above or the appraisers fail to determine the value of dissenting shares, and if no written request to value the dissenting shares is filed with the State Bank Commissioner within five (5) days after the expiration of such ninety-day period, then all dissenting stockholders who have failed to accept the offer of the State Bank within the thirty-day period prescribed above shall be bound by the terms of the plan of exchange.

(f) The amount due a dissenting stockholder under an accepted offer of the State Bank or under the appraisal shall constitute a debt of the State Bank which must be paid, if and when the plan of exchange is consummated, simultaneously with the surrender by the dissenting stockholder of his shares.

(g) Within ten (10) days after the plan of exchange is consummated, the State Bank shall give written notice thereof to each dissenting stockholder who is entitled to receive in cash the fair value of this shares.

(h) The plan of exchange shall provide for payment of or the manner of disposing of any shares of the State Bank not taken by dissenting stockholders."

SECTION 3. EMERGENCY CLAUSE. It is hereby found and determined by the Arkansas General Assembly that under existing statutes authorizing a state bank to reorganize through a plan of exchange with a bank holding company there is no requirement for the payment of a fee to the Arkansas State Bank Department or for the reimbursement of the Arkansas State Bank Department for expenses incurred by it in connection with reviewing, considering, and conducting a hearing on a plan of exchange and there is no procedure setting forth how expenses of the appraisal of dissenting shares shall be allocated

among the parties to a plan of exchange and the dissenting stockholders of the state bank involved, that the existing statutes relating to a plan of exchange are in many ways vague, ambiguous, and difficult to comprehend, that it is in the public interest to provide for the payment of a fee to, and for the reimbursement of expenses of, the Arkansas State Bank Department in connection with a plan of exchange, and that it is in the public interest to clarify the existing statutes relating to a plan of exchange. Therefore, an emergency is declared to exist, and this Act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval.

