

State of Arkansas

CALL ITEM 3

76th General Assembly

Fourth Extraordinary Session, 1988

HOUSE BILL 1002

By: Representative Wilson

"AN ACT TO AMEND CHAPTER 32 OF TITLE 23 OF THE ARKANSAS CODE OF 1987 BY ADDING THERETO A NEW SUBCHAPTER 18 TO AUTHORIZE REGIONAL RECIPROCAL INTERSTATE BANKING; TO AMEND SECTION 23-32-1201 OF THE ARKANSAS CODE OF 1987 ANNOTATED TO ADD A DEFINITION OF 'DE NOVO CHARTER'; TO AMEND SECTION 23-32-303(4) OF THE ARKANSAS CODE OF 1987 ANNOTATED TO AMEND THE DEFINITION OF 'DE NOVO CHARTER'; TO AMEND SECTION 23-32-1203(F) OF THE ARKANSAS CODE OF 1987 ANNOTATED TO PROVIDE FOR FINDINGS OF FACT; TO AMEND SECTION 23-32-1204 OF THE ARKANSAS CODE OF 1987 ANNOTATED TO AUTHORIZE PREEXISTING FACILITIES; TO AMEND SECTION 23-32-1202 OF THE ARKANSAS CODE OF 1987 TO PROVIDE FOR THE ORDERLY EXPANSION OF BRANCH BANKING IN THIS STATE; TO AMEND SECTION 23-37-404 OF THE ARKANSAS CODE OF 1987 RELATING TO BRANCHING BY SAVINGS AND LOAN ASSOCIATIONS; TO AMEND SECTION 23-32-401(4) TO RESTRICT SAVINGS AND LOAN ASSOCIATION BRANCHING TO THAT AUTHORIZED BY STATE LAW; TO AMEND SECTION 23-33-104 OF THE ARKANSAS CODE OF 1987 TO CLARIFY THE POWERS OF THE STATE BANK COMMISSIONER WITH RESPECT TO FAILED OR FAILING BANKS; TO PROVIDE FOR AN EMERGENCY CLAUSE; AND FOR OTHER PURPOSES."

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

SECTION 1. Interstate Banking.

Chapter 32 of Title 23 of the Arkansas Code of 1987 Annotated is hereby amended by adding thereto a new subchapter to read as follows:

Subchapter 18 - Regional Reciprocal Interstate Banking

23-32-1801. Title. This Act may be cited as the "Regional Reciprocal Banking Act of 1988."

23-32-1802. Definitions. For the purposes of this Act the following words and phrases shall have the meanings indicated. All references to federal law shall be to such law as it exists on June 30, 1988, including regulations issued thereunder.

(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; and

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

(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) "Commissioner" shall mean the Bank Commissioner of the State of Arkansas.

(h) "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.

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

(j) "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.

(k) 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.

(l) "Region" means the states of Arkansas, Tennessee, Missouri, Mississippi, Texas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, Kansas, Nebraska, District of Columbia and West Virginia.

(m) "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.

(n) "Regional Bank Holding Company" means a Bank Holding Company other than an Arkansas Bank Holding Company which

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

(4) 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.

(o) "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.

23-32-1803. Acquisition of Control.

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

(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. The information submitted shall include specific details of the intentions of the Regional Bank Holding Company on:

(i) activities intended to ascertain the credit needs of its community, including the extent of the bank's efforts to communicate with members of its community regarding the credit services being provided;

(ii) the extent of intended marketing and special credit-related programs to make members of the community aware of the credit services offered by it;

(iii) the extent of intended participation by the bank subsidiaries' board of directors in formulating the banks' policies and reviewing their performance with respect to the purposes of the federal Community Reinvestment Act of 1977;

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

(v) the intended geographic distribution of the banks' credit extensions, credit applications and credit denials;

(vi) the banks' intended participation, including investments, in local community development and redevelopment projects or programs including, but not limited to school district bonds, industrial revenue bonds, hospital bonds, water and sewer bonds, drainage district bonds and other improvement district bonds;

(vii) the banks' intended origination 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;

(viii) the banks' intended participation in

governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses or small farms; and

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

(b) The application shall include, where applicable, historical information concerning its existing subsidiary banks on all items required under subparagraph (a)(i) through (ix) above.

(c) (1) The information required in subparagraph (a) above shall be updated in annual reports submitted to the Commissioner. Such annual reports shall detail the Regional Bank Holding Company's compliance with the policies, plans and intentions 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 Commissioner may require.

(2) The Commissioner may review at any time the activities of a Regional Bank Holding Company and Arkansas Bank Holding Company and its Arkansas subsidiaries to determine whether the Regional Bank Holding Company and subsidiaries have fulfilled the commitments made pursuant to its application on its policies and plans for bringing new benefits to Arkansas and whether the Arkansas Bank Holding Company and its subsidiaries are fulfilling their obligations to the public to provide financial services on a competitive basis to meet the convenience and needs of the communities served by them. The Commissioner may require a Regional Bank Holding Company and Arkansas Bank Holding Company to make such additional reports that are found necessary to make a determination of whether such commitments and obligations are being met.

(3) Upon the determination of finding that a Regional Bank Holding Company or Arkansas Bank Holding Company has failed to substantially meet the commitments for policies and plans on bringing new benefits to Arkansas contained in the application or the obligations to the community the Commissioner may, after at least a twenty-day notice of such failure by the Commissioner to the Regional Bank Holding Company or Arkansas Bank Holding Company, hold a public hearing on the issue of whether the Regional Bank Holding Company or

Arkansas Bank Holding Company has met such commitments and obligations. If after the public hearing a determination is made that such commitments and obligations are not being met, then the Commissioner may assess civil money penalties against or require divestiture by the Regional Bank Holding Company or Arkansas Bank Holding Company. The civil money penalties shall be assessed through a cease and desist order issued according to the Commissioner's authority, and may be assessed at a rate of up to \$10,000.00 per day of violation. The order of divestiture shall be entered by the Commissioner only after a finding of flagrant and continued failure by an entity to fulfill commitments or obligations and shall require such divestiture in not less than two (2) years. The Commissioner shall have the right to waive or suspend such assessment or order of divestiture after issuance on terms that are just based upon corrective action by the entity penalized.

(4) The Commissioner may, from time to time issue such regulations as are reasonable and necessary to define the continuing obligation of both Regional and Arkansas Bank Holding Companies to meet their obligations to the public to provide financial services on a competitive basis to meet the convenience and needs of the communities served by them, and may enforce such regulations by the use of cease and desist orders assessing fines and requiring divestiture on the same terms as set out in subparagraph (3) above.

(d) A Regional Bank Holding Company is authorized to acquire an Arkansas Bank or Arkansas Bank Holding Company upon approval by the Commissioner, 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) determines 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;

(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 or Bank Holding Company to be acquired has its principal place of business and in each county where the Bank or subsidiaries of a Bank Holding Company has branches, and that a notice of intent to acquire has been mailed via certified mail to each person owning stock in the Bank or Bank Holding Company to be acquired; and

(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 Commissioner as provided in paragraph (d).

23-32-1804. Prohibited Transactions; Divestiture.

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

23-32-1805. 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 Commissioner 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) The Commissioner shall require an application fee of any applicant to acquire an Arkansas Bank or Arkansas Bank Holding Company of not less than \$1,000.00 nor more than \$10,000.00, to be determined by such rule, regulation or order of the Commissioner as may be necessary.

(c) 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 Commissioner 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 Commissioner of any

changes in its registered office and registered agent.

(d) The Commissioner 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 Commissioner 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.

(e) 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 Commissioner 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 2. Branching De Novo Definition.

Section 23-32-1201(3) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(3) 'De novo charter' shall mean a charter for a bank which has been issued for less than ten (10) years."

SECTION 3. Bank Holding Company De Novo Definition.

Section 23-32-303(4) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(4) '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 4. Branch Bank Locations.

Section 23-32-1202 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"23-32-1202. (a) No banking institution shall engage in the business of banking at any location other than at a principal banking office or branch bank in this state except as otherwise permitted by law.

(b) Any bank may establish a full service branch and/or establish, maintain and use a customer-bank communication terminal (as such term is defined in 23-32-1301 Arkansas Code of 1987 Annotated); provided that its supervisory banking authority approves its application for such full service branch. Full service branches and/or customer-bank communication terminals may only be established as follows:

(1) A bank may establish full service branches and/or customer-bank communication terminals anywhere within the county in which such establishing bank's principal banking office is located.

(2) A bank which relocates its principal banking office may continue to use its former principal banking office location as a full service branch and/or customer-bank communication terminal so long as such use as a banking facility is uninterrupted.

(3) In addition to the above subsections, after December 31, 1993, a bank may locate one or more full service branches and/or customer-bank communication terminals anywhere within any counties contiguous to the county in which its principal banking office is located.

(4) After December 31, 1998, a bank may locate one or more full service branches and/or customer-bank communication terminals anywhere in this state.

(c) Without regard to the exceptions for location of a branch bank and/or customer-bank communication terminals as provided in this Section, a bank may purchase the business and assets and assume the liabilities of, or merge or consolidate with, another bank located in any incorporated city or town within this state and operate the acquired bank as a full service branch and/or customer-bank communication terminals, provided that full service branches and/or customer-bank communication terminals shall not be established pursuant to purchase, merger or consolidation with another bank should either bank have

a de novo charter.

(d) None of the provisions of this Section which restrict the locations in which branch banks shall be established will be effective in emergency instances in which the purchase and assumption of the assets and liabilities of a 'failed' or 'failing' (less than three (3) percent capital-to-asset ratio) bank becomes necessary due to state or federal regulatory action.

(e) Any bank may relocate any existing branch to another location then authorized by law. The intent to make such relocation shall be conveyed in writing to the Commissioner no later than twenty business days before such relocation shall occur. Such written notice shall contain such information concerning the new location as the Commissioner may by regulation require. No fee shall be required with such notice. The Commissioner shall approve such relocation unless he finds that such relocation is not economically feasible or will not serve the public convenience and necessity. Such relocation shall not occur until the Commissioner shall approve the relocation."

SECTION 5. Order of the Commissioner.

Section 23-32-1203(f) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(f) The Commissioner's decision on a branch bank application will be in the form of final findings of fact and conclusions of law and an order given by the Commissioner within a reasonable time period following the expiration of the fifteen (15) calendar day formal protest period. Such findings of fact shall include findings that:

(1) Public convenience and necessity will be promoted by the establishment of the proposed full service branch;

(2) Local conditions assure reasonable promise of successful operation of the proposed full service branch;
and

(3) Suitable physical facilities will be provided for the full service branch."

SECTION 6. Use of Existing Facilities.

Section 23-32-1204 Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"23-32-1204. Any bank may, at its option, operate any branch office,

teller's window, or other banking facility which is separate from the main office of the bank and in operation on June 30, 1988 as a full service branch or a customer-bank communications terminal."

SECTION 7. Savings and Loan Association Branch Locations.

Section 23-37-404 of the Arkansas Code of 1987 Annotated is hereby amended to add the following subsections:

"(e) Any association legally chartered by the proper state authority may establish one (1) or more full service branches; provided that its supervisory authority approves, in the following locations:

(1) An association may establish branch offices anywhere within the county in which such establishing savings and loan association's principal office is located.

(2) In addition to the above section, after December 31, 1993, an association may locate branches anywhere within any counties contiguous to the county in which its principal office is located.

(3) After December 31, 1998, an association may locate branches anywhere within this state.

(f) Without regard to the exceptions for location of a branch of an association as provided in this Section, an association may purchase the business and assets and assume the liabilities of, or merge or consolidate with, another association located in any incorporated city or town within this state and operate the acquired association as a branch, provided that a branch shall not be established pursuant to purchase, merger or consolidation with another association should either association have a De Novo Charter. For purposes of this Section, the term 'De Novo Charter' means a charter for an association which has been in existence for less than ten (10) years. Provided, a 'De Novo Charter' does not include a charter which is issued in connection with the acquisition of assets and liabilities from a predecessor financial institution which is acquired through federal or state regulatory action.

(g) Nothing herein contained shall be construed to prevent any association from retaining branch locations, wherever located, in operation prior to June 30, 1988."

SECTION 8. Amend Section 23-37-401(4), Arkansas Code of 1987 Annotated.

Section 23-37-401(4), Arkansas Code of 1987 Annotated, is hereby amended to read as follows:

"(4) Adopt any business practice, procedure, method or system authorized by a federal association doing business in this state except nothing herein will permit an extension of state savings and loan association's branching authority beyond the limitations of state law."

SECTION 9. Amend Section 23-33-104, Arkansas Code of 1987 Annotated.

Section 23-33-104 of the Arkansas Code of 1987 Annotated, is hereby amended to read as follows:

"23-33-104. (a) Notwithstanding any other provisions of the banking laws of this state, upon a determination by the Bank Commissioner that a state bank is in such an impaired condition that it may fail, the Bank Commissioner may approve the sale of assets and assumption of liabilities, merger, or consolidation of the failing state bank or its holding company, if any, by another bank or a bank holding company. In considering transactions under this Section, the Commissioner shall consider the need to minimize disruption in providing banking services to the community involved and the need to preserve the strength, safety and soundness of the banking system.

(b) The Bank Commissioner may authorize purchases, mergers, or consolidations under this Section by considering applications in the following order:

(1) Between a failing bank and a bank or bank holding company whose principal banking office is in the same city or town;

(2) Between a failing bank and a bank or bank holding company whose principal banking office is in the same county;

(3) Between a failing bank and a bank or bank holding company whose principal banking office is in an adjacent county;

(4) Between a failing bank and a bank or bank holding company whose principal banking office is located in any part of the State of Arkansas;

(5) Between a failing bank and a bank or bank holding

company whose principal banking office is located in any state which is a member of the region included in the regional reciprocal banking laws of this state.

(6) Between a group of individuals, the majority of who are residents of the banking region, as defined in the regional reciprocal banking laws of this state.

(c) For the purposes of this Section and no other, the Bank Commissioner may determine that a state bank is a failing bank if all the following exist:

(1) It has an adjusted capital to assets ratio of less than three percent, according to an examination by the State Bank Department or the Federal Deposit Insurance Corporation.

(2) It is the conclusion of the Bank Commissioner that the bank has major and serious problems or unsafe and unsound conditions which are not being satisfactorily addressed or resolved.

(3) It is the conclusion of the Bank Commissioner that the bank has a high potential for failure, although failure is not necessarily imminent, that its failure is predictably inevitable and its shareholders and directors have been unable to sufficiently recapitalize the bank.

(d) Upon an acquisition of a failing bank as authorized by this Section, the acquiring or surviving entity may do any of the following:

(1) Retain and operate as a branch bank any existing office and any full service branch of the acquired bank.

(2) Apply for additional branches in the county in which the principal banking office of the acquired bank is located in the same manner authorized to any other bank.

(3) Merge the acquired bank with a bank subsidiary of the acquirer or itself, if it is a bank at any time following the acquisition. After such a merger, the surviving bank may utilize Paragraphs (1) and (2) of this Subsection.

(e) Nothing contained herein shall be construed to alter, amend or repeal the provisions or procedures for rights of minority shareholders, mergers and consolidations under normal conditions, branching authority for banks or for

emergency acquisition procedures for failed banks."

SECTION 10. Emergency.

It is hereby found and determined by the General Assembly that changes in the banking industry, and changes in the Federal banking laws, make it immediately necessary to amend the banking laws of this state to permit Arkansas banking institutions to maintain their competitive position with banks in the region and to make available a supply of funds needed for the community, business and economic expansion of this state through regional reciprocal interstate banking; that amendments to the branch banking laws of the state are immediately necessary to authorize county-wide branch banking and to provide for the orderly expansion of branch banking, after a period of time, outside the county, and to authorize statewide branch banking after a defined period of time; that clarification is needed with respect to existing laws of this state relating to state-chartered savings and loan associations; that clarification of the laws governing the authority of the Bank Commissioner to make orderly and sound decisions related to failed and failing banks if necessary to protect the public of this state against financial losses; and that the immediate passage of this Act is necessary for the clarification of the banking laws to preserve the safety and soundness of the Arkansas state banking system. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety should be in force and effective as follows: Section 1 of this Act shall be effective the earlier of (i) January 1, 1989, or (ii) the date on which a 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 Section, the total deposits of Banks within the Region shall be determined by the Bank Commissioner of the State of Arkansas by reference to the Spring 1988 issue of Polk's World Bank Directory, published by R. L. Polk and Company. The remaining Sections of this Act shall be effective immediately upon its passage and approval.

