

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

606

By: Senator Harriman

For An Act To Be Entitled

"AN ACT TO PROHIBIT FOREIGN INVESTORS TO INVEST MONEY IN ARKANSAS AND TO ENGAGE IN OTHER SPECIFIC ACTIVITIES WITHOUT QUALIFYING TO DO BUSINESS IN THIS STATE; AND FOR OTHER PURPOSES."

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

SECTION 1. Extent of benefits and application of act. (a) Nothing in this act shall be construed as limiting the benefits and application of this subchapter to loans insured or guaranteed by the Federal Housing Administration, the Veterans Administration, or any other governmental agency or department.

(b) The benefits of this act shall extend to and include all loans or participations or interests therein secured by mortgages or mortgage notes on real property situated in Arkansas, whether or not insured or guaranteed.

(c) Nothing in this act shall be construed to permit any foreign corporation to do business in violation of the small loan law of the State of Arkansas nor of the laws of Arkansas governing the organization and operation of building and loan associations or societies, or savings and loan associations or societies, or any insurance company nor to limit the authority of foreign corporations authorized to do unlimited business under the general laws of Arkansas, or to qualify to be so authorized.

SECTION 2. Permitted activities generally. Any foreign mutual savings bank, foreign mutual savings fund society, national banking association, foreign bank and trust company, foreign insurance company, or any foreign corporation all the capital stock, except directors' qualifying shares, of which is owned by one (1) or more of the above-named organizations shall not be considered to be transacting or engaging in business in this state

by reason of carrying on in this state any of the following activities if the organization is not organized under the laws of this state and does not maintain a place of business within this state:

(1) The acquisition or making of loans, or participation or interests therein, secured by deeds of trust, mortgages, or mortgage notes on real property situated in Arkansas pursuant to commitment agreements or arrangements made prior to or following the origination or creation of the loans;

(2) The making directly or through or in participation with national or state banks having their banking offices in this state or other Arkansas concerns engaged within this state in the business of making or servicing such loans, of loans secured by such mortgages or mortgage notes, or loans secured by assignments or pledges of obligations secured by such mortgages or mortgage notes;

(3) The ownership, modification, renewals, extensions, transfers, or foreclosure of those loans, mortgages, or mortgage notes, or the acceptance of substitute or additional obligators thereon;

(4) The maintenance of bank accounts in national or state banks having their banking offices within this state in connection with the collection or servicing of those loans, mortgages, or mortgage notes;

(5) The maintenance of depositary or pledge-holder agreements or arrangements with national or state banks having their banking offices within this state in connection with the taking of assignments or pledges of such loans, mortgages, or mortgage notes;

(6) The making, collection, and servicing of those loans, mortgages, or mortgage notes directly or through an Arkansas concern engaged in the business within this state of servicing real estate loans;

(7) The taking of deeds to the mortgaged property for a reasonable period of time either in lieu of foreclosure or for the purpose of transferring title either to the Federal Housing Administration or to the Veterans Administration as the insurer or guarantor;

(8) The acquisition of title to real property for a reasonable period of time under foreclosure sale or from the owner in lieu of foreclosure;

(9) The management, rental, maintenance, and sale, or the operating, maintaining, renting, or otherwise dealing with, selling, or disposing of real property acquired under foreclosure sale or by agreement in lieu thereof;

(10) The maintaining or defending of any actions or suits relating to those loans, deeds of trust, mortgages, mortgage notes, agreements, or other arrangements or activities referred to herein or incidental thereto; and

(11) The physical inspection and appraisal of real property in Arkansas as security for mortgage notes or mortgages and negotiations for those loans.

SECTION 3. Activities as fiduciary, trustee, or agent of trust.

(a) The acquisition or making of loans or participations or interest therein which are secured by mortgages or mortgage notes on real property located in this state and the doing of any or all the other acts or things with respect thereto enumerated in this act by any such bank, trust company, or any foreign corporation when acting as fiduciary, trustee, or agent of any trust, whether testamentary or inter vivos, including foundations and trusts established for the purpose of funding pension, profit-sharing, or employee benefit plans; or by an endowed institution, foundation, or eleemosynary corporation; or by any corporation chartered under the laws of another state as a group insurance and annuity association and engaged in the business of insurance, annuities, pensions, and retirement plans for any group of persons, educational institutions, and others; or by any foreign corporation all the capital stock of which, except directors' qualifying shares, is owned by one (1) or more of the entities referred to above shall likewise not be considered to be transacting or engaging in business in this state.

(b) Any such foreign corporation when so acting as fiduciary, trustee, or agent and any such trust, endowed institution, foundation, eleemosynary corporation, or group insurance and annuity association shall be entitled to all the rights, privileges, and exceptions set forth in this subchapter.

SECTION 4. Actions - Service of process - Venue. (a) (1) Any bank, trust company, foreign mutual savings bank, pension fund, foreign mutual savings fund society, mutual banking association, foreign insurance company, or any other type of organization defined in this act and investing funds in Arkansas may sue or be sued within this state in relation to such mortgages or deeds of trust on real properties, securities, or debts, and service of process may be performed by service upon any custodian or agent appointed within the state.

(2) If no custodian or agent has been appointed, the Secretary of

State shall be and he is appointed and shall remain as the duly authorized agent of the organization upon whom the service of process may be had.

(b) The Secretary of State, upon the receipt of process by him on the organization, shall forthwith forward notice of the receipt by registered mail with return receipt requested to the post office of the nonresident corporation, mutual savings bank, or association and shall make a notation of that fact upon his process record to that effect.

(c) In cases where the organization is sued, the venue of the action shall be in the county of the residence of the plaintiffs, or any of them, except where land is involved, in which case venue shall be in the county in which the land, or any part of it, is located.

SECTION 5. Taxes. No corporation, institution, or entity coming under the provisions of this act and confining its business operations in Arkansas within the limits herein provided shall be required to qualify to do business in this state by filing its charter in the office of the Secretary of State or to pay any tax or fee required to be paid by foreign corporations under any law of this state. However, the exemption shall not include:

(1) Ad valorem taxes assessed against any real property which the corporation, institution, or entity may own in the State of Arkansas;

(2) Arkansas income, franchise, and privilege tax which may result from the sale, ownership, or control after acquisition of the property by foreclosure, or acquisition in lieu of foreclosure, either by virtue of the value of the specific piece of property so foreclosed or to which title is taken in lieu of foreclosure, or by virtue of the rental or other income realized from the property.

SECTION 6. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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