

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

A Bill

SENATE BILL 642

4 **By:**

5 **Senators Keet, Wilson, Harriman, Hardin, Canada, Miles, Malone, Gordon,**

6 **Snyder, Gwatney, Russ, and Lewellen**

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For An Act To Be Entitled

10 "AN ACT TO CREATE THE ARKANSAS CAPITAL ACCESS PROGRAM FOR
11 SMALL BUSINESS; TO PROVIDE FOR LEGISLATIVE INTENT AND
12 PURPOSE; TO PROVIDE FOR DEFINITIONS; TO AUTHORIZE THE
13 ARKANSAS DEVELOPMENT FINANCE AUTHORITY TO CONTRACT WITH
14 FINANCIAL INSTITUTIONS; TO AUTHORIZE THE CREATION OF THE
15 CAPITAL ACCESS FUND; TO PROVIDE FOR THE ESTABLISHMENT OF
16 LOAN LOSS RESERVE ACCOUNTS AND PROVIDE FOR TRANSFERS TO
17 LOAN LOSS RESERVE ACCOUNTS; TO PROVIDE FOR ENROLLMENT OF
18 QUALIFIED LOANS; PRESCRIBING OTHER MATTERS THERETO;
19 DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES."

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Subtitle

22 "TO CREATE THE ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL
23 BUSINESS."

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

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27 SECTION 1. This act may be referred to and cited as the "Arkansas
28 Capital Access Program for Small Business Act of 1993".

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30 SECTION 2. LEGISLATIVE FINDINGS AND DECLARATION OF PUBLIC NECESSITY.
31 The General Assembly finds:

32 (a) There is a persistent shortage of capital available to small
33 businesses in Arkansas and there exists an immediate and urgent need to
34 provide the means and methods for providing financing:

35 (i) to improve the viability of small businesses in the state by

1 stabilizing and increasing employment in small businesses;

2 (ii) to foster an environment that promotes the establishment of
3 new small businesses which reduces the state's unemployment rate by hiring new
4 employees;

5 (iii) to complement Arkansas financial institutions to better
6 serve their customers in ways which contribute to a strengthened and
7 diversified Arkansas economy, and which does not compete with Arkansas
8 financial institutions.

9 (b) Small businesses make important contributions to economic growth
10 and vitality in this state.

11 (c) Small businesses comprise approximately 85% of the business
12 entities in this state.

13 (d) Small businesses provide approximately 98% of the private sector
14 employment in this state.

15 (e) All national economic indicators establish that the greatest source
16 of future new employment is in the small business sector of the economy.

17 (f) Many private sector financial institutions in Arkansas are limited
18 in their ability to provide financing to small but rapidly growing businesses.

19 (g) There exists a need to leverage private sector investment in
20 entrepreneurial activity, and in economic development finance; therefore,
21 state assistance for development finance should reflect a leveraging
22 investment strategy.

23 (h) It is the purpose of this act to establish a capital access program
24 under which the state of Arkansas through the Arkansas Development Finance
25 Authority will provide public fiscal resources to assist Arkansas financial
26 institutions to overcome obstacles and constraints in meeting the full range
27 of economically sound financing needs of Arkansas small businesses.

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29 SECTION 3. DEFINITIONS. The following terms shall have the definitions
30 ascribed to them unless the context requires otherwise:

31 (a) "Act" means the Arkansas Capital Access Program for Small Business
32 Act of 1993.

33 (b) "Authority" means the Arkansas Development Finance Authority.

34 (c) "Financial institution" means all state banks, savings and loan
35 associations, and any other financial institutions of this state which are or

1 shall become a depository of state funds, which agree to participate in the
2 program.

3 (d) "Loss reserve account" means an account in any financial
4 institution which is established and maintained by the Authority for the
5 benefit of a financial institution participating in the Program.

6 (e) "Program" means the Arkansas Capital Access Program for Small
7 Business.

8 (f) "Qualified business" means any person, conducting business for
9 profit or not for profit, that is authorized to conduct business in the state
10 of Arkansas.

11 (g) "Qualified loan" means a loan or portion of a loan made by a
12 financial institution to a qualified business for any business activity that
13 has its primary economic effect in Arkansas.

14 (h) "State" means the state of Arkansas.

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16 SECTION 4. CONTRACTS WITH FINANCIAL INSTITUTIONS FOR CAPITAL ACCESS;
17 CONTENTS OF CONTRACT.

18 (a) The Authority may contract with any financial institution for the
19 purpose of allowing the financial institution to participate in the Program.

20 (b) A contract between the Authority and a financial institution under
21 this section shall provide:

22 (i) For the creation of a loss reserve account by the Authority
23 for the benefit of the financial institution.

24 (ii) That the financial institution, qualified business and the
25 Authority will deposit moneys to the credit of the institution's loss reserve
26 account when the financial institution makes a qualified loan to a qualified
27 business.

28 (iii) That the Authority will pay moneys in the loss reserve
29 account, not exceeding an amount equal to the total amount credited to the
30 loss reserve account, to the financial institution to reimburse the
31 institution for any financial loss incurred as a result of any qualified loan
32 made under the Program.

33 (iv) That the liability of the Authority to the financial
34 institution under the contract is limited to the amount of money credited to
35 the loss reserve account of the institution.

1 (v) For such other terms as the Authority may require.

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3 SECTION 5. CAPITAL ACCESS FUND; USE; INVESTMENT EARNINGS;
4 ADMINISTRATIVE EXPENSES.

5 (a) There is hereby created within the Authority the Capital Access
6 Fund. All moneys deposited into the fund are for the purpose of making
7 payments to loan loss reserve accounts established under Section 6 of this
8 act. *All monies available for deposit into this fund shall be restricted to*
9 *only such cash funds available to the Authority for the purposes provided*
10 *herein.*

11 (b) Moneys in the Capital Access Fund may be invested as provided in
12 Ark. Code Ann. § 15-5-407.

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14 SECTION 6. LOSS RESERVE ACCOUNTS; LIMITATION ON AMOUNT.

15 (a) The Authority shall establish a loss reserve account for each
16 financial institution with which the Authority makes a contract.

17 (b) The loss reserve account for a financial institution shall consist
18 of moneys paid in fees by borrowers and the financial institution and moneys
19 transferred to the account from the Capital Access Fund.

20 (c) The Authority may establish and maintain loss reserve accounts
21 with any financial institution under such policies as the Authority may adopt.

22 (d) All moneys in a loss reserve account are the property of the
23 Authority.

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25 SECTION 7. ENROLLMENT OF QUALIFIED LOAN IN PROGRAM; PROCEDURE; FEE;
26 TRANSFERS TO LOSS RESERVE ACCOUNT.

27 (a) When a financial institution participates in the Program, if the
28 financial institution decides to enroll a qualified loan under the Program in
29 order to obtain the protection against loss provided by its loss reserve
30 account, the financial institution shall notify the Authority of the loan
31 within 10 days after the loan is made. The notification shall be in writing
32 on a form prescribed by the Authority.

33 (b) When making a qualified loan that will be enrolled under the
34 Program, the financial institution shall require the qualified business to
35 which the loan is made to pay a fee of not less than one and one-half percent

1 of the principal amount of the loan but not more than three and one-half
2 percent of such principal amount. The financial institution shall also pay a
3 fee in an amount equal to the fee paid by the borrower, provided, however,
4 that the financial institution may collect the amount of its fee from the
5 qualified borrower. The financial institution shall deliver the fees
6 collected under this subsection to the Authority for deposit in the loss
7 reserve account for the institution.

8 (c) When depositing fees collected under subsection (b) of this
9 section to the credit of the loss reserve account for a financial institution,
10 the Authority shall transfer an amount that is not less than the total amount
11 of the fees paid by the borrower and the financial institution from the
12 Capital Access Fund to the loss reserve account for the institution.

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14 SECTION 8. CLAIMS FOR REIMBURSEMENT OF LOSSES; AMOUNTS SUBJECT TO
15 REIMBURSEMENT.

16 (a) The Authority shall establish procedures under which financial
17 institutions participating in the Program may submit claims for reimbursement
18 for losses incurred as a result of qualified loan defaults.

19 (b) Costs for which a financial institution may be reimbursed from its
20 loss reserve account include loan principal, accrued interest on the
21 principal, actual and necessary costs of seeking recovery of the principal
22 amount and interest thereon and any other related costs.

23 (c) A financial institution may seek reimbursement of loan losses
24 prior to the liquidation of collateral from defaulted loans. The financial
25 institution shall repay its loss reserve account for any moneys received as
26 reimbursement under this section if the financial institution recovers moneys
27 from the borrower or from the liquidation of collateral for the defaulted
28 loan.

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30 SECTION 9. RULES. The Authority may adopt such rules as it considers
31 necessary to carry out its duties, functions and powers relating to the
32 Program.

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34 SECTION 10. FINANCIAL REPORT OF CAPITAL ACCESS FUND.

35 (a) At least semi-annually of every calendar year, the Authority shall

1 prepare a report conforming to generally accepted accounting principles that
2 describe the financial condition of the Capital Access Fund, and describes the
3 results and economic impact of the Program.

4 (b) The reports required under this section shall be submitted to the
5 Governor and to the Arkansas Legislative Council.

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7 SECTION 11. All provisions of this act of a general and permanent
8 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
9 Code Revision Commission shall incorporate the same in the Code.

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11 SECTION 12. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.

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17 SECTION 13. All laws and parts of laws in conflict with this act are
18 hereby repealed.

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20 SECTION 14. EMERGENCY CLAUSE. It is hereby found and determined by the
21 Seventy-Ninth General Assembly that there is an urgent need to provide
22 assistance to financial institutions in providing affordable financing to
23 small businesses in Arkansas and that the Authority possesses the expertise
24 and resources to establish and administer the Program. Therefore, an
25 emergency is hereby declared to exist and this Act being necessary for the
26 preservation of the public peace, health, and safety shall be in full force
27 and effect from and after its passage.

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/s/ Senator Keet, et al.

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