

1 State of Arkansas  
2 80th General Assembly  
3 Regular Session, 1995  
4 By: Senator Mahony

# A Bill

SENATE BILL 758

## For An Act To Be Entitled

"AN ACT TO AMEND THE BANK HOLDING COMPANY SUBSIDIARY TRUST  
COMPANY FORMATION ACT OF 1989; AND FOR OTHER PURPOSES."

### Subtitle

"TO PROVIDE A PROCEDURE FOR A NATIONAL  
TRUST COMPANY LOCATED IN THE STATE OF  
ARKANSAS TO SUBSTITUTE TRUST POWERS WITH  
AFFILIATED BANKS."

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

SECTION 1. Arkansas Code 23-32-1902 is amended to read as follows:

"§ 23-32-1902. Legislative findings.

The General Assembly of the State of Arkansas finds that it would be in the best interest of the population of Arkansas to permit bank holding companies to create, form, and establish subsidiary trust companies or national trust companies to the extent provided in this subchapter in order to improve customer service, significantly reduce overhead costs, and improve their ability to meet increased competition."

SECTION 2. Arkansas Code 23-32-1903 is amended to read as follows:

"§ 23-32-1903. Definitions.

For purposes of this subchapter:

(1) Affiliated bank means a state or national bank, having its main office in this state, more than fifty percent (50%) of the voting stock of which is owned directly or indirectly by:

(A) *The same bank holding company that owns, directly or indirectly, more than fifty percent (50%) of the voting stock of a subsidiary*

1 trust company or national trust company; or

2           (B) The same five (5) or fewer persons who are individuals,  
3 estates, or trusts that own directly or indirectly more than fifty percent  
4 (50%) of the voting stock of the bank holding company described in  
5 subdivision (1)(A) of this section, taking into account the stock ownership  
6 of each such person only to the extent such ownership is identical with  
7 respect to each of the bank and the bank holding company;

8           (2) Subsidiary trust company means a corporation organized under  
9 this subchapter to conduct trust business and business incidental to trust  
10 business, having its main office in this state, of which more than fifty  
11 percent (50%) of the voting stock is owned directly or indirectly by a *bank*  
12 *holding company as defined by § 23-32-301 et seq. which also owns, directly*  
13 *or indirectly, an Affiliated Bank.*

14           (3) National Trust Company means a company organized under the laws  
15 of the United States to conduct trust business and business incidental to  
16 trust business, having its main office in this state, of which more than  
17 fifty percent (50%) of the voting stock is owned directly or indirectly by a  
18 *bank holding company, as defined by § 23-32-301, et seq. which also owns,*  
19 *directly or indirectly, an Affiliated Bank."*

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21           SECTION 3. Arkansas Code 23-32-1904 is amended to read as follows:

22           "§ 23-32-1904. Creation, formation, etc. - Powers - Location.

23           (a) Notwithstanding the provisions of § 23-32-306, *bank holding*  
24 *companies that own, directly or indirectly, an Affiliated Bank are authorized*  
25 *and empowered by the provisions of this subchapter (i) to create, form, and*  
26 *establish subsidiary trust companies under this subchapter for the purpose of*  
27 *combining the trust operations of their affiliated banks into a single trust*  
28 *operation and (ii) to create, form, and establish national trust companies*  
29 *under the laws of the United States.*

30           (b) The newly formed subsidiary trust company shall only have the  
31 ability to conduct trust business that could be conducted by the individual  
32 trust departments combined from the affiliated banks to create the subsidiary  
33 trust company.

34           (c) *Offices of a subsidiary trust company may be located only (i) in*  
35 *communities where its affiliated banks or their branches are located; or (ii)*

1 *in communities where it would be authorized to have an office if it were a*  
2 *national trust company.*

3 (d) The newly formed national trust company shall have the ability to  
4 conduct business as allowed by the laws of the United States. \_"

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6 SECTION 4. Arkansas Code 32-31-1905 is amended to read as follows:

7 "§ 23-32-1905. Substitution of subsidiary trust company or national  
8 trust company for affiliated bank.

9 (a) A subsidiary trust company or national trust company and one (1)  
10 or more of its affiliated banks may enter into one (1) or more agreements  
11 under which the subsidiary trust company or national trust company is  
12 substituted as fiduciary for each affiliated bank in each fiduciary account  
13 listed in the agreement. The agreement shall be filed with the Bank  
14 Commissioner before the effective date of the substitution and must include:

15 (1) A list of each fiduciary account for which substitution is  
16 requested; and

17 (2) The effective date of the substitution, which may not be  
18 less than ninety (90) days after the date of the agreement.

19 (b) Not later than ninety (90) days before the effective date of a  
20 substitution under this section, the parties to the substitution agreement  
21 shall send written notice of the substitution to the following:

22 (1) Each person who is readily ascertainable as a beneficiary of  
23 the account because of the receipt of statements of account by the person, or  
24 in the case of a minor beneficiary, by a parent, conservator, or guardian of  
25 the minor beneficiary;

26 (2) Each cofiduciary;

27 (3) Each surviving settlor of a trust;

28 (4) Each issuer of a security for which the affiliated bank  
29 administers a fiduciary account;

30 (5) The plan sponsor of each employee benefit plan;

31 (6) The principal of each agency account; and

32 (7) The guardian of the person of each ward under guardianship.

33 (c) The notice must be sent by United States mail to the person's  
34 current address as shown on the fiduciary records. If the fiduciary has no  
35 address for the person on its records, the fiduciary shall make a reasonable

1 attempt to ascertain the person's current address. The notice must disclose  
2 the person's rights with respect to objecting to the transfer of the  
3 fiduciary account and the liability of the existing fiduciary and the  
4 substitute fiduciary for their actions. Intentional failure to send the  
5 required notice renders the substitution of fiduciary ineffective, but an  
6 unintentional failure to send the required notice does not impair the  
7 validity or effect of substitution. If a substitution of a subsidiary trust  
8 company is ineffective because of a defect in the required notice, the  
9 actions taken by the subsidiary trust company before the determination of the  
10 invalidity of the substitution are valid if the actions would have been valid  
11 if performed by the affiliated bank.

12 (d) Except as provided by this subsection, the prospective designation  
13 in a will or other instrument of the affiliated bank as fiduciary is  
14 considered designation of the subsidiary trust company or national trust  
15 company, and any grant in the will or other instrument of any discretionary  
16 power is considered conferred on the subsidiary trust company or national  
17 trust company. However, the affiliated bank and subsidiary trust company or  
18 national trust company may agree in writing to have the designation of the  
19 affiliated bank as fiduciary be binding, or the creator of the fiduciary  
20 account may, by appropriate language in the document creating the fiduciary  
21 account, provide that the fiduciary account is not eligible for substitution  
22 under this subchapter.

23 (e) Substitution under this section is effective for all purposes on  
24 the effective date stated in the agreement between the subsidiary trust  
25 company or national trust company and the affiliated bank, unless, not later  
26 than fifteen (15) days before the effective date, a party entitled to notice  
27 of the substitution under subsection (b) of this section files a written  
28 petition in a court of competent jurisdiction seeking to have the  
29 substitution denied under § 23-32-1906 and provides the affiliated bank with  
30 a copy of the filed petition.

31 (f) If a petition is filed and notice is given under subsection (e) of  
32 this section, the substitution takes effect when the petition is withdrawn or  
33 dismissed or when the court enters a final order denying the relief sought.

34 (g) On the effective date, the subsidiary trust company or national  
35 trust company succeeds to all right, title, and interest in all property that

1 the affiliated bank holds as fiduciary, except property held for accounts for  
2 which there has been no substitution under this subchapter, without the  
3 necessity of any instrument of transfer or conveyance, and the subsidiary  
4 trust company or national trust company shall, without the necessity of any  
5 judicial action or action by the creator of the fiduciary account, become  
6 fiduciary and perform all the duties and obligations and exercise all the  
7 powers and authority connected with or incidental to that fiduciary capacity  
8 in the same manner as if the subsidiary trust company or national trust  
9 company had been originally named or designated fiduciary. However, the  
10 affiliated bank is responsible and liable for all actions taken by it while  
11 it acted as fiduciary.\_"

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13 SECTION 5. Arkansas Code 23-32-1906 is amended to read as follows:

14 "§ 23-32-1906. Removal of accounts from operation of substitution  
15 agreement - Denial of substitution.

16 (a) A fiduciary account may be removed from the operation of the  
17 agreement by an amendment to the agreement filed with the Bank Commissioner  
18 before the effective date stated in the agreement.

19 (b) The substitution of a subsidiary trust company or national trust  
20 company as fiduciary of an account may be denied if the court having  
21 jurisdiction, on notice and hearing, determines that the substitution of  
22 fiduciary is a material detriment to the account or to the beneficiaries of  
23 the account.

24 (c) Subsection (b) of this section is cumulative to any applicable  
25 provision for removal of a fiduciary or appointment of a successor fiduciary  
26 under Arkansas law or in the instrument creating the fiduciary relationship.

27 (d) In any proceeding under this section, the court may award costs  
28 and reasonable and necessary attorney's fees as the court considers equitable  
29 and just.\_"

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31 SECTION 6. Arkansas Code 23-32-1907 is amended to read as follows:

32 "§ 23-32-1907. Deposits.

33 (a) A subsidiary trust company or national trust company may deposit  
34 with an affiliated bank fiduciary funds that are being held pending  
35 investment, distribution, or payment of debts.

1 (b) A subsidiary trust company or national trust company may deposit  
2 with an affiliated bank fiduciary funds as a permanent investment if  
3 authorized by the settlor in the instrument creating the trust or if  
4 authorized in a writing delivered to the trustee by a beneficiary currently  
5 eligible to receive distributions from a trust.\_"

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7 SECTION 7. Arkansas Code 23-32-1908 is amended to read as follows:

8 "§ 23-32-1908. Responsibility for acts and omissions.

9 (a) The subsidiary trust company's or national trust company\_s owning  
10 bank holding company shall file with the Bank Commissioner an irrevocable  
11 undertaking to be fully responsible for the existing and future fiduciary  
12 acts and omissions of its subsidiary trust company or national trust company.

13 (b) If an affiliated bank has given bond to secure performance of its  
14 duties and the subsidiary trust company or national trust company qualifies  
15 as successor fiduciary, the subsidiary trust company or national trust  
16 company shall give bond to secure performance of its duties in the same  
17 manner.\_"

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19 SECTION 8. Arkansas Code 23-32-1909 is amended to read as follows:

20 "§ 23-32-1909. Qualification as successor fiduciary.

21 For the purposes of qualification as successor fiduciary under any  
22 requirements contained in any document creating a fiduciary account or any  
23 statute of this state relating to fiduciary accounts, the subsidiary trust  
24 company or national trust company:

25 (1) Is considered to have capital and surplus equal to its capital and  
26 surplus plus the capital and surplus of its owning bank holding company; and

27 (2) Shall be treated as a national bank, unless:

28 (A) It is not a national bank under federal law relating to  
29 national banks; and

30 (B) It has not entered into a substitution agreement with an  
31 affiliated bank that is a national bank under federal law relating to  
32 national banks.\_"

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34 SECTION 9. *Statement of Legislative Purpose. The purpose of this act*  
35 *is to clarify and confirm the authority of a bank holding company acting*

1 pursuant to Ark. Code 23-32-1901, et seq. to create, form, and establish a  
2 subsidiary trust company or national trust company, whether organized under  
3 the laws of the United States or this state, and to substitute such  
4 subsidiary trust company or national trust company as fiduciary for banks  
5 affilliated with such bank holding company. Substitution of any such  
6 subsidiary trust company or national trust company pursuant to Ark. Code 23-  
7 32-1901, et seq. prior to the effective date of this act is hereby confirmed.

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9 SECTION 10. All provisions of this act of a general and permanent  
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
11 Code Revision Commission shall incorporate the same in the Code.

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

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19 SECTION 12. All laws and parts of laws in conflict with this act are  
20 hereby repealed.

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22 /s/Mahony  
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