

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1075

4
5 By: House Interim Committee on Insurance and Commerce
6 By: Senate Interim Committee on Insurance and Commerce

For An Act To Be Entitled

"THE ARKANSAS BANKING CODE OF 1997."

Subtitle

"THE ARKANSAS BANKING CODE OF 1997."

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

16 SECTION 1. Title 23 of the Arkansas Code is amended by adding six
17 additional chapters to read as follow:

"Chapter 45

SHORT TITLE, DEFINITIONS AND MISCELLANEOUS

23-45-101. Short Title.

This act may be referred to as The Arkansas Banking Code of 1997.

23-45-102. Definitions.

Subject to other definitions contained in subsequent sections of this
act, and unless the context otherwise requires, in this act:

(1) Affiliate means, with respect to a specified person, a person
that controls, is controlled by, or is under common control with another
person;

(2) Arkansas bank holding company means a bank holding company that
controls one (1) or more state bank. For purposes of this definition,
control has the meaning set forth in 12 U.S.C. § 1841(a)(2);

(3) Arkansas Banking Code means The Arkansas Banking Code of 1997;

(4) Bank means a state or a national bank;

(5)(A) Bank holding company means any company, foreign or domestic,
including a bank:

1 (i) Which directly or indirectly owns, controls, or holds with
2 power to vote twenty-five percent (25%) or more of the voting shares of any
3 bank;

4 (ii) Which controls in any manner the election of a majority of
5 the directors of any bank; or

6 (iii) For the benefit of whose shareholders or members twenty-
7 five percent (25%) or more of the voting shares of any bank or a bank holding
8 company is held by trustees;

9 (B) Notwithstanding the foregoing:

10 (i) No company shall be a bank holding company by virtue of its
11 ownership or control of shares which are acquired by it in connection with its
12 underwriting of securities and which are held only for such period of time as
13 will permit the sale thereof upon a reasonable basis;

14 (ii) No company formed for the sole purpose of participating in a
15 proxy solicitation shall be a bank holding company by virtue of its control of
16 voting rights of shares acquired in the course of the solicitation;

17 (C) As used in this definition of bank holding company, company
18 means any corporation, limited liability company, or business trust doing
19 business in this state but does not include any corporation the majority of
20 the shares of which are owned by the United States or by any state;

21 (6) Bank premises includes the state bank's or subsidiary trust
22 company's main office site, all branch and other lawful office sites, the main
23 office building and all branch and other lawful office buildings, any or all
24 of which may have additional space for occupancy by tenants, and any parking
25 areas or parking structures which constitute adjuncts to any of the state bank
26 or subsidiary trust company property.

27 (7) Banking Board means the Arkansas State Banking Board;

28 (8) Capital base means the sum of capital, surplus, and undivided
29 profits, plus any additions and less any subtractions which the Commissioner
30 may by regulation prescribe;

31 (9) Capital development corporation means a corporation authorized to
32 be organized under the provisions of the Arkansas Capital Development
33 Corporation Act;

34 (10) Commissioner means the Bank Commissioner;

35 (11) Court means a court of competent jurisdiction;

36 (12) Day means a calendar day;

1 (13) Department means the State Bank Department of this state;

2 (14) Department regulations or Department regulation means
3 regulations promulgated by the Commissioner with the approval of the Banking
4 Board;

5 (15) De novo charter means a charter for a bank which has been in
6 existence for less than five (5) years, but it does not include a charter
7 which is issued in connection with the acquisition of assets or liabilities
8 from a predecessor financial institution. A bank resulting from the
9 conversion of a savings and loan association to a bank, from the conversion of
10 a state bank to a national bank, or from the conversion of a national bank to
11 a state bank shall be deemed to have been in existence, for the purpose of
12 determining whether it has a de novo charter, from the date the converting
13 institution came into existence;

14 (16) Deposit and deposit account means the unpaid balance of money
15 or its equivalent received or held by a bank in the usual course of its
16 banking business and which represents a liability of the bank, for which it
17 has given or is obligated to give credit, either conditionally or
18 unconditionally, to a checking, savings, time or similar account, or which is
19 evidenced by its certificate of deposit or similar certificate or a check or
20 draft drawn against a deposit account and certified by the bank or a draft or
21 cashier's, officer's or traveler's check or money order or similar instrument
22 on which the bank is primarily liable (and which has not been paid) and such
23 other obligations or instruments of a bank as may be included in the
24 definition of deposit or deposit account in Department regulations.

25 (17) Depository institution means any bank, savings and loan
26 association, state or federal credit union, or any corporation that the
27 Commissioner determines to be operating in substantially the same manner as
28 such entities;

29 (18) Federal financial institutions regulatory agency means the
30 Federal Reserve System, including its Board of Governors, the Federal Deposit
31 Insurance Corporation, the Comptroller of the Currency, or the Office of
32 Thrift Supervision, or their successors;

33 (19) Financial institution means any state bank, bank holding
34 company, or subsidiary trust company;

35 (20) Main banking office or main office, with respect to a bank,
36 means the main banking office designated or provided for in the articles of

1 incorporation of a state bank, and the main office designated or provided for
2 in the articles of association of a national bank, at such identified location
3 as shall have been or as hereafter may be approved by the Commissioner, in the
4 case of a state bank, or by the appropriate federal regulatory agency, in the
5 case of a national bank;

6 (21) National bank means a national banking association organized
7 pursuant to 12 U.S.C. §§ 21-215b;

8 (22) National trust company means a company organized under the laws
9 of the United States to conduct trust business and business incidental to
10 trust business, having its main office in this state, or of which more than
11 fifty percent (50%) of the voting stock is owned, directly or indirectly, by a
12 bank holding company which also owns, directly or indirectly, an affiliated
13 bank, as defined in subchapter 8 of Chapter 47 of this title;

14 (23) Order means all, or any part, of the final disposition, whether
15 affirmative, negative, injunctive or declaratory in form, by the Commissioner
16 or the Banking Board, of any matter other than the making of regulations of
17 general application;

18 (24) Person means an individual, corporation, partnership, joint
19 venture, trust, estate, limited liability company or other unincorporated
20 association or any other legal or commercial entity;

21 (25) Predecessor financial institution means a depository institution
22 whose charter ceased to exist in connection with the purchase of its assets or
23 the assumption of its liabilities by a successor bank;

24 (26) Safe deposit box means a safe, box or other receptacle for the
25 safekeeping of property, which is located on a bank's premises and leased by
26 the bank to a lessee;

27 (27) Savings and loan association means a corporation carrying on the
28 business of a savings and loan association or a building and loan association
29 under a charter issued by this state, or any federal savings association or
30 federal savings bank which is chartered under federal law;

31 (28) State bank means: (a) a corporation created pursuant to either
32 Act 113 of the Arkansas General Assembly of 1913 or Act 179 of the Arkansas
33 General Assembly of 1969 (or pursuant to any predecessor or successor act or
34 acts of either of the foregoing) and existing and authorized under the laws of
35 this state on May 30, 1997, to engage in a general commercial banking
36 business; and (b) a corporation organized under the provisions of this act and

1 authorized thereunder to engage in a general commercial banking business;

2 (29) Subsidiary trust company means a corporation organized under the
3 Arkansas Business Corporation Act, § 4-27-101, et seq. and authorized by the
4 Commissioner pursuant to subchapter 8 of Chapter 47 of this title or the Bank
5 Holding Company Subsidiary Trust Company Formation Act of 1989 to conduct
6 trust business and business incidental to trust business, having its main
7 office in this state, of which more than fifty percent (50%) of the voting
8 stock is owned, directly or indirectly, by a bank holding company which also
9 owns, directly or indirectly, an affiliated bank, as that term is defined in
10 said subchapter 8 of Chapter 47 of this title.

11

12 23-45-103. Effect on existing financial institutions.

13 (a) The charters of state banks existing at the time of the adoption of
14 this act shall continue in full force and effect, and all financial
15 institutions and, to the extent applicable, all national banks and national
16 trust companies, shall hereafter be operated in accordance with the provisions
17 of this act, and other applicable law.

18 (b) Except as otherwise provided in this act, the repeal of any
19 provision of Chapters 30-34 of Title 23 of the Arkansas Code at the time of
20 adoption of this act shall not affect any right accrued or established, or any
21 liability or penalty incurred, under such provision, prior to the repeal
22 thereof.

23 (c) All powers granted in this act may be freely exercised by any
24 financial institution to which such powers apply, without the necessity of
25 amending its articles of incorporation, unless such articles expressly
26 prohibit the exercise of such powers.

27

28 23-45-104. Unauthorized activity as a financial institution --
29 Incorporation of industrial loan institutions prohibited -- Individuals and
30 partnerships not to transact general commercial banking business.

31 (a) From and after May 31, 1997,

32 (1) It shall be unlawful for any person, by whatever name called,
33 to do business as a bank within this state or to maintain any office in this
34 state for the purpose of doing such business, except state banks, and national
35 banks chartered to do business in this state.

36 (2) No certificate of incorporation for a new state bank in this

1 state shall be issued, and no new state bank shall be permitted to engage in
2 business within Arkansas except by permission of the Commissioner and upon
3 approval of an application for a new state bank charter by the Commissioner
4 and the Banking Board. The issuance of such certificate shall be within the
5 sole discretion of the Commissioner and the Banking Board, and the giving of
6 such permission shall be within the sole discretion of the Commissioner.

7 (3) Whenever it shall appear to the Commissioner that any person
8 is conducting business as a state bank without authority, the Commissioner may
9 determine that such person is fully subject to the Commissioner's supervisory
10 and regulatory powers, and to the provisions of this act.

11 (4) No new industrial loan institution shall be incorporated in
12 this state.

13 (5) No partnership or individual, or other unincorporated person,
14 may lawfully transact a general commercial banking business in this state.

15 (6) No person, other than a bank, national trust company or
16 subsidiary trust company, shall be authorized or permitted to engage, conduct
17 or perform any business operations in this state in which it acts on behalf of
18 others as a trustee, executor, administrator, custodian, registrar, paying
19 agent or transfer agent of stocks and bonds, guardian of estates, assignee,
20 receiver, or in any other fiduciary capacity in which banks, subsidiary trust
21 companies and national trust companies are authorized to act.

22 (b) Nothing in this section shall be construed to prohibit or interfere
23 with the operations of duly and lawfully organized savings and loan
24 associations or credit unions qualified to do business in this state.

25

26 23-45-105. Headings.

27 The headings and captions contained in this act are for convenience
28 only, do not constitute any part of the statutes comprising this code, and
29 shall not be used in construing or interpreting this act.

30

31 23-45-106. Rules of construction.

32 (a) Unless otherwise specifically indicated, and to the fullest extent
33 permitted by the Constitution of Arkansas, any reference in this act to an
34 existing state or federal statute or regulation shall mean to such statute or
35 regulation as has been or may in the future be amended or supplemented. If in
36 any case such construction is not constitutionally permissible, such reference

1 shall mean to the statute or regulation as it existed on May 31, 1997.

2 (b) Unless the context otherwise requires:

3 (1) Any reference in this act to applicable law, existing law, or
 4 similar references, shall encompass the laws of the executive, legislative and
 5 judicial branches of the appropriate jurisdiction;

6 (2) Any reference in this act to the discretion of the Commissioner
 7 shall mean the sole, uncontrolled discretion of the Commissioner;

8 (3) Any reference in this act to the Federal Deposit Insurance
 9 Corporation shall also reference any successor thereof.

10

11

Chapter 46

12

STATE BANK DEPARTMENT AND STATE BANKING BOARD, REPORTS AND EXAMINATIONS

13

Subchapter 1 - GENERAL PROVISIONS

14

15

23-46-101. Confidential records.

16

(a) Notwithstanding the Arkansas Freedom of Information Act, the
 17 following records of the Department shall be confidential and shall not be
 18 exhibited or revealed to the public except as stated in this section or in
 19 accordance with Department regulations:

20

(1) All examination reports filed with the Department;

21

(2) All records disclosing information obtained from examinations;

22

(3) Investigations and reports revealing facts concerning a financial
 23 institution, a capital development corporation, or the customers of such
 24 organizations; and

25

(4) All personal financial statements submitted to the Department for
 26 any purpose.

27

(b) Notwithstanding any provision of this section to the contrary,
 28 records deemed confidential in accordance with this section may, in the
 29 Commissioner's discretion, be disclosed as follows:

30

(1) Under a validly issued subpoena and, in the interest of justice,
 31 the Commissioner may waive the privilege created herein and produce
 32 examination reports and other related documents under the provisions of a
 33 protective order entered by a court or administrative tribunal of competent
 34 jurisdiction where such order is designed to protect the confidential nature
 35 of the information so disclosed from public dissemination;

36

(2) Official orders of the Department may be disclosed within the

1 discretion of the Commissioner if the Commissioner makes a determination that
2 such a disclosure would not give advantage to a competitor or adversely affect
3 the safety and soundness of the financial institution; and

4 (3) To federal financial institutions regulatory agencies and financial
5 institutions regulatory agencies of other states.

6 (c) The Commissioner shall have the power to promulgate regulations
7 with regard to disclosure of confidential information.

8

9

Subchapter 2 - STATE BANK DEPARTMENT

10

11 23-46-201. Creation.

12 There is created and established, at the seat of government of this
13 state, a department to be known as the State Bank Department.

14

15 23-46-202. Offices.

16 There shall be assigned, by the officer or board having custody of the
17 public buildings, suitable offices for the business of the Department, with
18 the necessary conveniences for the transaction of business and the safekeeping
19 of the records of the Department.

20

21 23-46-203. Seal - Evidentiary effect - Fees.

22 (a) An appropriate seal shall be procured to be the official seal for
23 the Department.

24 (b) Every paper executed by the Commissioner in pursuance of the
25 authority conferred upon him by law and sealed with the seal of the Department
26 or certified by the Department shall be received in evidence and recorded in
27 the proper recording offices in the same manner as deeds regularly
28 acknowledged.

29 (c) Whenever it is necessary for the Commissioner to approve any
30 instrument and to affix the official seal thereto, the Commissioner shall
31 charge a fee as provided by regulation for affixing his approval and the
32 official seal to such instrument. Copies of all records and papers in the
33 office of the Department, certified by the Commissioner and authenticated by
34 the seal, shall be received in evidence in all cases equally and of like
35 effect as the originals thereof. Whenever it is proper to furnish a copy of
36 any paper filed in the Department and to certify that paper, the Commissioner

1 may charge a fee as provided by Department regulation.

2

3 23-46-204. Commissioner -- Appointment and removal.

4 (a) The Governor, by and with the advice and consent of the Senate,
5 shall appoint a Commissioner who shall:

6 (1) Be a resident of this state;

7 (2) Be at least thirty (30) years of age; and

8 (3) Have not less than five (5) years* experience either in practical
9 banking or in the bank department of a state.

10 (b) The Commissioner shall be the head of the Department and shall hold
11 his office for the term of four (4) years beginning from the date of actual
12 appointment by the Governor and expiring four (4) years from that date and
13 until a successor is appointed.

14 (c) The Commissioner may be removed by the Governor from office for
15 neglect of duty, malfeasance, misfeasance, extortion or corruption in office,
16 incompetency, or mental or physical disability to such an extreme as to render
17 the Commissioner unable or unfit for the discharge of his duties, or for any
18 offense involving moral turpitude while in office committed under color of or
19 connected with such office.

20 (d) In the event there shall be an inability to serve in the office
21 caused by death, suspension, removal, disability, disqualification or
22 resignation of the Commissioner, a deputy commissioner previously designated
23 by the Commissioner shall exercise the powers and perform the duties of the
24 Commissioner until a successor is appointed by the Governor, with the advice
25 and consent of the Senate, who shall serve for the remainder of the unexpired
26 term fixed by law.

27

28 23-46-205. Commissioner - Powers and duties.

29 (a) The Commissioner shall be charged with the general supervision of
30 financial institutions, the execution of all laws passed by the State of
31 Arkansas relating to the organization, operations, inspection, supervision,
32 control, liquidation, and dissolution of banks, bank holding companies,
33 subsidiary trust companies, and the general commercial banking business of
34 Arkansas, and such other duties as prescribed by law.

35 (b)(1) The Commissioner shall have the power to issue such rules and
36 regulations as may be necessary or appropriate to carry out the intent and

1 purposes of all those laws and to issue cease and desist orders against any
 2 financial institution, or an officer, director or employee of any financial
 3 institution, found to be violating federal banking laws or regulations,
 4 violating the banking laws of this state or Department regulations, violating
 5 any regulatory agreement, or jeopardizing the safety and soundness of any
 6 financial institution.

7 (2) The Commissioner may issue rules or regulations only with the
 8 approval and consent of the Banking Board, but he shall have power to issue
 9 cease and desist orders upon his own motion. Nothing in this section shall be
 10 construed to curtail the Commissioner's power to issue emergency rules and
 11 regulations with the approval and consent of the Banking Board.

12 (3) Any person subject to a cease and desist order issued by the
 13 Commissioner that shall refuse or fail to comply with the terms of such order
 14 may be assessed a monetary penalty for such failure to comply with the
 15 provisions of the cease and desist order after a ten-day notice given by the
 16 Commissioner to the institution or person subject to the order. The amount of
 17 the monetary penalty shall not exceed one thousand dollars (\$1,000) per day of
 18 violation against each institution and each officer, director or employee
 19 contributing to the institution's or individual's failure to comply with the
 20 provisions of the cease and desist order. Subject to such limitation, the
 21 amount of the monetary penalty shall be determined by the Commissioner.

22 (4) The Commissioner may issue a cease and desist order for removal of
 23 an officer, director, employee, agent or any other person participating in
 24 the affairs of or otherwise connected with a financial institution subject to
 25 the supervision of the Commissioner, or any affiliate thereof, from service to
 26 that institution or affiliate if he or she is found by the Commissioner to be
 27 or of having been:

28 (A) Violating state or federal law, rules and regulations of a federal
 29 financial institutions regulatory agency, or Department regulations;

30 (B) Acting incompetently, recklessly, or dishonestly;

31 (C) Indicted of a crime involving moral turpitude; or

32 (D) Otherwise impairing the safety and soundness of the financial
 33 institution.

34 (5) Any person aggrieved and directly affected by an order of the
 35 Commissioner issued pursuant to this section is entitled to judicial review.
 36 A person so aggrieved may seek judicial review by petition to a chancery court

1 having jurisdiction in the matter. Such petition must be filed within seven
2 (7) days from the date of issuance of the order.

3 (c) Department regulations shall be distributed, in form and method
4 selected by the Commissioner, to all state banks chartered in the State of
5 Arkansas.

6 (d) In addition to other powers, the Commissioner shall have the power
7 and authority to:

8 (1) Inspect and copy all books, records, and other information relating
9 to the financial institutions he regulates;

10 (2) Restrict withdrawal of deposits from state banks under
11 extraordinary circumstances;

12 (3) Subpoena witnesses, compel their attendance, require production of
13 evidence, and administer oaths;

14 (4) Approve or disapprove applications for new state bank charters or
15 branch facilities in connection with failed institutions as provided in 23-48-
16 511;

17 (5) Approve or disapprove applications for voluntary liquidations as
18 provided in 23-50-103;

19 (6) Define any term or phrase used in this act which is not defined by
20 this act;

21 (7) Issue orders, declaratory statements, disseminate information, and
22 otherwise exercise discretion to effectuate the purposes of this act and all
23 laws described in subsection (a) hereof, and to interpret and implement the
24 provisions of those laws consistently with such purposes;

25 (8) Authorize state banks to engage in any banking activity in which
26 national banks are authorized or may hereafter be authorized by federal
27 legislation or regulations to engage; and

28 (9) Cooperate with federal financial institutions regulatory agencies.

29 (e) As soon as practicable after acceptance of any application referred
30 to either in this act or in Department regulations for filing, regardless of
31 whether such application is of a type referred to in 23-46-403, and receipt of
32 the filing fee therefor, the Commissioner shall cause the merits of the
33 application to be investigated. The investigation shall enable the
34 Commissioner to determine the fitness of the applicants, and shall address all
35 questions which bear directly or indirectly upon the appropriateness of
36 granting the application and the need from the public standpoint for granting

1 the application. To the extent that the Commissioner deems it appropriate,
 2 the scope of the Commissioner's investigation of any application may include
 3 the investigation of those matters described in 23-48-304 pertaining to
 4 applications for new state bank charters.

5

6 23-46-206. Employment and duties of staff generally.

7 (a) The Commissioner shall employ from time to time such assistants,
 8 examiners, clerks, stenographers, counsel and such other personnel as he may
 9 find necessary to properly and efficiently discharge the duties of his office.
 10 The Commissioner shall be authorized to set minimum qualifications for these
 11 persons and to fix their levels of compensation within the limitations of the
 12 numbers of such employees and the appropriations for their salaries as
 13 provided from time to time by acts of the General Assembly, provided he shall
 14 incur no expense until an appropriation shall have been made therefor nor in
 15 excess of the revenues of the Department.

16 (b) Counsel employed by the Commissioner shall advise the Commissioner
 17 in all legal matters affecting the Department.

18 (c) Notwithstanding any other provisions of state law, and in order to
 19 maintain the confidentiality of information and the security of Department
 20 personnel in the performance of their duties, the Commissioner shall be
 21 authorized to establish travel reimbursement guidelines for payment of
 22 expenses of Department personnel incurred in the performance of their duties.

23 (d) If the Commissioner is not himself at any time available for the
 24 transaction of any specific matter committed by law to his authority or
 25 discretion, any one of the deputy commissioners, or any other staff member so
 26 designated by the Commissioner in writing, may transact such matter in the
 27 name and stead of the Commissioner.

28 (e) The Commissioner, each member of the Banking Board, the deputy
 29 commissioners, chief examiners, counsel, each examiner, each accountant, each
 30 attorney, and each other officer, person and/or employee of or for the
 31 Department shall not be personally liable for damages occasioned by his
 32 official acts or omissions, except when such acts or omissions are corrupt and
 33 malicious. The Attorney General shall defend any action brought against any
 34 of the above-mentioned persons by reason of his official acts or omissions,
 35 regardless of whether at the time of institution of the action the defendant
 36 has terminated his service with the Department.

1

2 23-46-207. Interests in state banks prohibited.

3 (a) No employee or officer of the Department who participates in the
4 examination of a financial institution, or who may be called upon to make an
5 official decision or determination affecting the operation of a financial
6 institution, shall be an officer, director, attorney, owner, or holder of
7 stock in any state bank, or bank holding company which owns or controls a
8 state bank subsidiary, or receive, directly or indirectly, any payment or
9 gratuity from any such organizations. A person subject to this section may
10 not borrow money from a state bank except as provided in subsection (b)
11 hereof.

12 (b) A person subject to this section may:

13 (1) Be a depositor in any financial institution that the Department
14 regulates, and participate in such overdraft programs associated with such
15 deposit relationships as the Commissioner may, by regulation, allow; and

16 (2) Purchase banking services, other than credit services, under rates
17 and terms generally available to other customers of the financial institution.

18

19 23-46-208. Employee bonds.

20 (a) All employees shall be required to furnish bonds in such amounts as
21 the Commissioner shall deem sufficient to cover the liabilities of their
22 respective positions, which bonds may be made by any guaranty company
23 authorized to do business in this state.

24 (b) The fees paid by any officer or employee of the Department to any
25 guaranty or bonding company for a fidelity bond shall be considered and
26 charged as expenses of the Department. However, the expense of any fidelity
27 bond written on a special deputy commissioner appointed as special liquidating
28 agent for an insolvent state bank or subsidiary trust company shall be paid
29 out of the assets of the insolvent state bank or subsidiary trust company.

30 (c) No expense shall be incurred until an appropriation shall be made
31 for such purpose, and in no case shall any liability be created for the state
32 in excess of the appropriation therefor.

33

34 23-46-209. Records and financial reports -- Disposition of funds.

35 (a) The Commissioner shall keep a true and perfect record of all of the
36 business of the Department and shall make monthly reports to the State Auditor

1 of all fees collected by him, which he shall promptly pay to the State
2 Treasurer, taking duplicate receipts therefor, one (1) of which shall be filed
3 with the Auditor of State.

4 (b) All fees and other revenues received by the Department shall be
5 deposited into the State Treasury as special revenues and credited to the Bank
6 Department Fund to be used solely for the payment of the expenses of the
7 Department pursuant to the appropriations therefor.

8 (c) The Auditor of State shall, upon proper voucher from the
9 Commissioner, issue his warrant on the State Treasurer in payment of all
10 salaries and other expenses incurred in the administration of this act.

11

12 23-46-210. Annual and biennial reports of Commissioner.

13 (a) The Commissioner shall make an annual report to the Governor of the
14 work and the business of the Department, which shall embrace a statement of
15 all receipts and expenditures and the name, officers, directors, domicile,
16 capital, surplus, net profits, and deposits of each state bank, in the state,
17 and such other information as the Commissioner deems advisable.

18 (b) He shall also, biennially, make a detailed estimate of the expenses
19 of the Department for the two (2) succeeding fiscal years.

20

21 23-46-211. Retention of Department Records.

22 (a) The Department shall retain its general records for at least ten
23 (10) years, with the following exceptions:

24 (1) Transcripts of hearings before the Banking Board or the Commissioner
25 shall be retained for at least three (3) years;

26 (2) Applications submitted to the Department shall be retained for at
27 least three (3) years;

28 (3) Articles of incorporation and amendments thereto, and stock transfer
29 certificates and approvals shall be retained permanently, except in cases
30 where such records concern a bank which has been merged, sold or liquidated,
31 in which cases such records shall be retained for at least five (5) years.

32 (b) In lieu of retention of the original records thereof, the Department
33 may cause any or all of its records and records held at any time in its
34 custody to be photographed or otherwise reproduced in permanent form. Any
35 such photograph or other reproduction shall have the same force and effect as
36 the original thereof, and be admitted into evidence equally as with the

1 original.

2

3

Subchapter 3 -- STATE BANKING BOARD

4

5 23-46-301. Creation -- Members -- Staff, etc.

6 (a) There is created a commission which shall be known as the _State
7 Banking Board_.

8 (b)(1) The Banking Board shall be composed of six (6) members appointed
9 by the Governor, subject to confirmation by the Senate, for terms of five (5)
10 years or until a successor has been appointed and qualified.

11 (2) At the time of their appointment, all members of the Banking Board
12 shall be, and shall continue thereafter to be, residents of the State of
13 Arkansas. They shall be of the age of thirty (30) years or over.

14 (3) Board members serving on May 30, 1997, shall continue to serve the
15 remainder of their terms.

16 (c)(1) For purposes of filling vacancies on the Banking Board, members
17 shall be numbered one (1) through six (6), inclusive.

18 (A) Three (3) members shall be designated banker members; two (2)
19 members shall be designated public members; one (1) member shall be designated
20 as the representative of the elderly. A banker member is a person whose
21 primary occupation is banking; a public member is a person whose primary
22 occupation is outside the field of banking; the representative of the elderly
23 shall be sixty (60) years of age or older and shall not be actively engaged in
24 or retired from the occupation of banking.

25 (B) One (1) of the banker members shall be designated the Department
26 member, and the other two (2) shall be designated the Arkansas Bankers'
27 Association members. These positions are to be determined by lot.

28 (2) On the occasion of a vacancy on the Banking Board of a Department
29 member, a successor shall be selected from among two (2) or more bankers whose
30 names shall be supplied by the Commissioner.

31 (3) On the occasion of a vacancy in the Banking Board of one (1) of the
32 Arkansas Bankers' Association banker members, a successor shall be selected
33 from among two (2) or more bankers whose names shall be supplied by the
34 Arkansas Bankers' Association.

35 (4) The Governor shall make the appointment of all successor Banking
36 Board members from among those persons recommended as provided in this

1 section, provided that the Banking Board shall consist of one (1) member from
2 each of the four (4) congressional districts as prescribed in Arkansas Code 7-
3 2-101 et seq., and two (2) members from the state at large, one (1) of whom
4 shall be the representative of the elderly.

5 (d)(1) No member of the Banking Board shall receive, directly or
6 indirectly, any compensation or recompense for his services on the Banking
7 Board.

8 (2) Notwithstanding Arkansas Code 25-16-901 et seq., should any member
9 of the Banking Board live outside the capital city of the state, he may, upon
10 application to the Commissioner, be reimbursed, out of the income of the
11 office of the Commissioner and in the manner provided by law, for such actual
12 travel and subsistence expense as may actually have been incurred by him in
13 connection with attendance at any meeting of the Banking Board.

14 (e) The office of the Commissioner shall be the office of the Banking
15 Board.

16 (f) The Banking Board may select as its secretary, a deputy bank
17 commissioner or a stenographer employed in the office of the Commissioner, but
18 no compensation shall be paid to any person whatsoever for services rendered
19 as secretary of the Banking Board.

20 (g) Except as provided in 23-46-402, the presence at any meeting of at
21 least four (4) members of the Banking Board shall be necessary to constitute a
22 quorum, and the concurring votes of not less than a majority of the members
23 present at any meeting shall be necessary to the decision of any question or
24 issue or the authorization of any action. The representative of the elderly
25 shall be a full voting member.

26

27 23-46-302. Special Banking Board members.

28 (a) When any member of the Banking Board is disqualified for any reason
29 to hear and participate in the determination of any matter pending before the
30 Banking Board, the Governor shall appoint a qualified person to hear and
31 participate in the decision on the particular matter.

32 (b) The special Banking Board member so appointed shall have all
33 authority and responsibility with respect to the particular matter before the
34 Banking Board of a regular Banking Board member but shall have no authority or
35 responsibility with respect to any other matter before the Banking Board.

36

1 23-46-303. Study of banking statutes.

2 The Banking Board is authorized, at such times as it deems appropriate,
 3 to request a review or study of state banking law and recommend any changes
 4 that it may deem appropriate to the Governor.

5

6 23-46-304. Powers of the Banking Board -- Filings with the
 7 Commissioner.

8 (a) In addition to all other powers conferred by Arkansas law, the
 9 Banking Board shall have the power and duty to:

10 (1) Approve or disapprove applications for charters for new state
 11 banks, except applications for new state bank charters in connection with
 12 failed institutions as provided in 23-48-511;

13 (2) Approve or disapprove applications for the merger or consolidation
 14 of one (1) or more banks or one (1) or more savings and loan associations into
 15 a state bank;

16 (3) Approve or disapprove applications for the purchase by one state
 17 bank of over fifty percent (50%) of the assets of another depository
 18 institution, and applications for the assumption by one state bank of over
 19 fifty percent (50%) of the liabilities of another depository institution;

20 (4) Approve or disapprove applications by a savings and loan
 21 association to convert to a state bank;

22 (5) Approve or disapprove applications for amendments to the articles of
 23 incorporation of an existing state bank;

24 (6) Approve or disapprove applications for the relocation of a state
 25 bank's main office from one (1) municipality to another;

26 (7) Approve or disapprove rules and regulations promulgated by the
 27 Commissioner;

28 (8) Authorize a state bank under circumstances in which it is not given
 29 authority under state law to participate in any public agency hereinafter
 30 created under the laws of this state or of the United States, the purpose of
 31 which is to afford advantages or safeguards to banks or trust companies, and
 32 to authorize compliance with all requirements and conditions imposed upon such
 33 participants;

34 (9) Subpoena witnesses; and

35 (10) Require such clerical and technical assistance as is necessary or
 36 appropriate to carry out its duties.

1 (b) Upon the submission to it by the Commissioner of each application,
2 the Banking Board shall review the results of the Commissioner's investigation
3 and make such further investigation, if any, as it may deem appropriate to
4 enable it to determine the fitness of the applicants, the need from the public
5 standpoint for the granting of the application, and all other questions,
6 whether or not of like kind with those referred to in this section, which bear
7 directly or indirectly upon the need or desirability from the public
8 standpoint for the granting of the application.

9 (c) Filing with the Commissioner of any application or document
10 required by this act or by Department regulations shall be public notice of
11 the matters contained in that application or document. The Commissioner shall
12 maintain such applications or documents in his custody. Upon request, the
13 Commissioner shall provide verification of the filing and reasonable access to
14 inspection by the public. Nothing in this section shall be construed to
15 modify the prohibitions upon the disclosure of confidential information
16 contained in 23-46-101, or the Commissioner's authority to issue regulations
17 concerning the disclosure of confidential information.

18

19 23-46-305. Applications.

20 (a) All applications for which the Banking Board is empowered to
21 consider for approval or disapproval shall, as soon as practicable, be
22 submitted by the Commissioner to the Banking Board for consideration at a
23 regular meeting of the Banking Board or at a special meeting called for the
24 purpose thereof.

25 (b) Applications of the types described in subsections (a)(1) through
26 (a)(4) of 23-46-304 must demonstrate that the applicant has such minimum
27 amount of capital as the Commissioner may require.

28

29 Subchapter 4 -- PROCEEDINGS BEFORE BOARD AND COMMISSIONER

30

31 23-46-401. Applicability.

32 Nothing in this subchapter is intended to have any application to:

33 (1) A merger under which a state bank merges into a national bank; or

34 (2) Any consolidation proceeding under which a state bank becomes
35 consolidated into a national bank; or

36 (3) Any proceeding under which a state bank is converted into a

1 national bank or a national bank is converted into a state bank.

2

3 23-46-402. Meetings of board -- Notice.

4 (a)(1) The Chairman of the Banking Board or the Commissioner may call a
5 special meeting of the Banking Board upon notice through a personal
6 communication with each member of the Banking Board by telephone or through a
7 written notice transmitted by ordinary, certified, or registered mail,
8 personal delivery, overnight delivery, or telefacsimile directed to each
9 member of the Banking Board at his business or residence address as shown on
10 the records of the Banking Board.

11 (2) The records of the Department shall affirmatively reflect the time
12 and manner in which the meeting was called and notice thereof given.

13 (b) The Banking Board members may waive any notice of a special meeting
14 by signing a written consent to the holding of the meeting or by appearing at
15 the meeting and participating therein.

16 (c) In the instances where notice of a special meeting is not waived by
17 the Banking Board members, such notice shall be given to the Banking Board
18 members at least fourteen (14) days before the meeting.

19 (d) If at any time it is impossible for the Commissioner or the
20 chairman to give notice of a meeting to Banking Board members because of the
21 death, disability, or absence from the state of such members, a meeting of the
22 Banking Board may be called by notice given to such members as are available.
23 In this event, the unanimous action of three (3) of the members who were so
24 served with notice shall be the action of the Banking Board. This rule shall
25 also be applicable in situations where, under subsection (g) of this section,
26 the Banking Board is permitted to act informally without a fixed meeting.

27 (e) The Banking Board may also hold regular meetings on dates fixed in
28 its procedures, policies, and regulations.

29 (f) The Banking Board may permit any or all of its members to
30 participate in a regular or special meeting by, or conduct the meeting through
31 the use of, any means of communication by which all members participating may
32 simultaneously hear each other during the meeting. A member participating in
33 a meeting by this means is deemed to be present in person at the meeting.

34 (g) Matters other than applications described in this section requiring
35 the Banking Board's consideration, and which are not contested may, in the
36 Commissioner's discretion, be considered by the Banking Board through mailing

1 or delivering of all necessary documents and correspondence to all Banking
2 Board members no formal meeting being necessary. Applications submitted to
3 the Banking Board according to this procedure must be filed with the
4 Commissioner for at least three (3) days prior to submission to the Banking
5 Board with no protests having been filed. Where the application is thus
6 submitted, the written approval or disapproval endorsed upon the application,
7 or a copy thereof, and transmitted to the Commissioner by at least four (4)
8 members of the Banking Board shall represent the action of the Banking Board.

9

10

11 23-46-403. Applications -- Publication of notice.

12 (a) When any of the following applications are filed with the
13 Commissioner, the sponsors of such applications shall give notice of filing
14 through publication by one (1) insertion in a newspaper published in the City
15 of Little Rock and having a general and substantially statewide circulation:

16 (1) An application for the issuance of a new state bank charter; or

17 (2) An application for the merger or consolidation of one (1) or more
18 banks into a state bank; or

19 (3) An application for the merger or consolidation of one (1) or more
20 savings and loan associations into a state bank; or

21 (4) An application for the purchase by one (1) state bank of over fifty
22 percent (50%) of the assets of another depository institution, or an
23 application for the assumption by one (1) state bank of over fifty percent
24 (50%) of the liabilities of another depository institution; or

25 (5) An application for the change of a state bank's place of business
26 from one (1) municipality to another.

27 (b) The sponsors of the applications described in subsection (a) hereof
28 shall give written notice of filing through the United States mail to all
29 banks:

30 (1) In the case of an application described in subsection (a)(1)
31 hereof, in the county wherein the main office of the proposed new state bank
32 is to be located; or

33 (2) In the case of an application described in subsection (a)(2) or
34 (a)(3) hereof, in the county wherein the main office of the resultant state
35 bank is located or is to be located, and the counties in which the main
36 offices of the banks or savings and loan associations which are parties to the

1 merger or consolidation are located; or

2 (3) In the case of an application described in subsection (a)(4)
3 hereof, in the county wherein the main office of the purchasing state bank is
4 located, and the county wherein the main office of the bank or savings and
5 loan association, the assets of which are proposed to be purchased, is
6 located; or

7 (4) In the case of an application described in subsection (a)(5)
8 hereof, in the county wherein the main office of the applicant state bank is
9 located and, if different, the county to which the applicant state bank
10 proposes to relocate such main office.

11

12 23-46-404. Applications fees -- Commissioner regulations.

13 (a) The Banking Board shall have the power to set and impose fees for
14 any and all applications, regardless of whether such applications are of a
15 type described in 23-46-403, which are reasonably calculated to defray the
16 costs associated with the consideration, investigation and processing of those
17 applications.

18 (b) The Commissioner may issue rules and regulations specifying the
19 circumstances under which any application must be filed, and the procedural
20 and substantive requirements governing the filing of any and all applications
21 of whatever type. The Commissioner may also issue rules and regulations
22 requiring the submission of applications that are not described in this act.

23

24 23-46-405. Investigation -- Notice of hearing.

25 (a) When the departmental investigation pursuant to 23-46-205 or 23-48-
26 304 is closed, and the application fees have been paid, an application filed
27 pursuant to 23-46-403 shall be referred to the Banking Board for consideration
28 by it and the Commissioner at a public hearing.

29 (b) Notice of the time, place, and purpose of the meeting shall be
30 given at least thirty (30) days before the hearing as follows:

31 (1) By letter from the Commissioner to the sponsors of the application
32 and to each bank to which the sponsors of the application are required to give
33 written notice pursuant to 23-46-403(b); and

34 (2) By letter from the Commissioner to each person who has notified the
35 Department of an intention to oppose the application, provided that if a group
36 of persons has protested the application, the notice may be given to one (1)

1 member of the group; and

2 (3) By release to news media.

3

4 23-46-406. Hearing.

5 (a) No person shall appear in opposition to the application unless such
6 person shall have filed a written protest to the granting of the application
7 within thirty (30) days after the date of the notice of the filing of the
8 application. Such protest must state the grounds for objection and must be
9 accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor
10 more than five thousand dollars (\$5,000) for each protestant, such amount to
11 be set by Department regulation.

12 (b) At the hearing all persons sponsoring the application and any person
13 making a timely written protest against the application may appear. The
14 attorneys for any such person may appear and be heard.

15 (c) The Commissioner will participate with the Banking Board in the
16 hearing.

17 (d) The Banking Board or the Commissioner may subpoena witnesses on
18 their own motion or on the request of any party to the proceedings.

19 (e) The admission of evidence at such hearing shall be controlled by §
20 25-15-213. The parties shall have the right to cross-examine witnesses.
21 Official notice may be taken of judicially cognizable facts and of generally
22 recognized technical or scientific facts within the Banking Board's
23 specialized knowledge. The parties may bind themselves by stipulation.

24 (f) The applicant shall be responsible for procuring and paying for a
25 verbatim record of the proceeding. It will be the duty of the applicant to
26 furnish at least one (1) copy of the transcript to the Commissioner free of
27 charge.

28

29 23-46-407. Decision --- Judicial review.

30 (a) The Banking Board shall render its decision in writing, at or after
31 a hearing before it, which decision shall include the Banking Board's
32 findings of fact and conclusions of law.

33 (b)(1) If the application is approved by the Banking Board, the
34 Commissioner may, in the event that he also shall approve the application,
35 grant the relief sought. If the Commissioner does not concur in the Banking
36 Board's grant of the application, the relief sought shall not be granted, and

1 the Commissioner's written decision stating his reasons for not concurring
2 shall be attached to the copy of the Banking Board's decision and shall be
3 mailed to each person which actively appeared and participated in the hearing.

4 (2) If the Banking Board shall disapprove the application, the
5 Commissioner shall not grant the relief sought.

6 (c)(1) The time for filing a petition for judicial review under the
7 Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the
8 date the final decision of the Banking Board is mailed or delivered, in
9 written form, to the parties desiring to appeal.

10 (2) The hearing of such a petition for review will be advanced on the
11 docket of each reviewing court as a matter of public interest.

12

13 Subchapter 5 -- REPORTS AND EXAMINATIONS

14

15 23-46-501. Call for reports.

16 The Commissioner shall have power to call for reports from state banks
17 and subsidiary trust companies whenever deemed necessary, in order to obtain a
18 full and complete knowledge of their condition or the status of their
19 reserves, but he shall call upon each of them for at least two (2) reports
20 each year.

21

22 23-46-502. Statement on call.

23 (a) Every state bank and subsidiary trust company operating under the
24 supervision of the Commissioner shall make to the Commissioner, whenever
25 required by him, a statement of its assets and liabilities as shown by its
26 records at the close of business on the day designated, which day shall be
27 prior to the call of the Commissioner.

28 (b) The Commissioner shall not give notice to any person whomsoever of
29 the date on which he will call for the statement.

30 (c) The reports shall be verified by the institution's president, or a
31 vice president, and in addition thereto, shall be attested by not less than
32 two (2) directors.

33 (d)(1) The reports required by this section shall embrace the amount of
34 paid-up capital, surplus, net undivided profits, deposits, and all other
35 liabilities of whatsoever character.

36 (2)(A) It shall also state the amount loaned upon real estate, notes,

1 bills of exchange, overdrafts, bonds, and other securities, stating the actual
2 market value of the bonds or securities, the amount invested in real estate
3 for banking premises, other real estate owned, when and how acquired, and the
4 actual cost, cash on hand and on deposit in other banks, subject to check,
5 with the amount and character of all other assets, together with such other
6 information as the Commissioner may require.

7 (B) Any commercial or other unsecured paper past due twelve (12) months,
8 on which the interest is unpaid and not in process of collection, shall not be
9 included as an asset in the report.

10

11 23-46-503. When examinations made.

12 (a) The Commissioner shall, as often as may be deemed necessary or
13 proper, appoint suitable persons to make an examination of each state bank or
14 subsidiary trust company.

15 (b)(1) A thorough examination into the affairs of each state bank or
16 subsidiary trust company shall be made at least once every twenty-four-month
17 period; provided however, the twenty-four-month period may be extended to a
18 thirty-six-month period if an interim thorough examination is performed by the
19 state bank's or subsidiary trust company's primary federal regulatory
20 authority.

21 (2) The Commissioner may authorize examinations at more frequent
22 intervals if he shall deem it proper.

23

24 23-46-504. Examination of affiliates.

25 The Commissioner may make at any time, and from time to time, such
26 examinations of the affairs of affiliates of state banks or of affiliates of
27 subsidiary trust companies as shall be necessary to disclose fully the
28 relations between the state banks and their affiliates or between the
29 subsidiary trust companies and their affiliates, and the effect of those
30 relations on the affairs of the state banks or subsidiary trust companies.

31

32 23-46-505. Noncompliance with banking law -- Special examinations.

33 Whenever it shall come to the knowledge of the Commissioner that any
34 state bank or subsidiary trust company has failed or refused to comply with
35 any of the provisions of this act, with any provision of federal law or
36 federal regulations applicable to financial institutions, with any Department

1 regulations, or with any direction of the Commissioner made specifically to
2 that state bank or subsidiary trust company as a result of an examination into
3 its affairs, he is authorized, as a penalty for that failure or refusal, to
4 make a special examination of the state bank or subsidiary trust company, to
5 charge and collect the same fees therefor as for a regular examination and to
6 continue such examinations and charges at intervals of thirty (30) days or
7 less until such provisions, regulations, and directions are complied with.

8

9 23-46-506. Examination procedure.

10 (a) The Commissioner or any examiner appointed by him shall have power
11 to make a thorough examination of all the records and affairs of any state
12 bank, any Arkansas bank holding company, or any subsidiary trust company.

13 (b)(1) In making examinations, the representative of the Department may
14 examine under oath any stockholder, director, officer, agent, clerk, or other
15 employee or representative of the state bank, Arkansas bank holding company,
16 or subsidiary trust company, or any other person, touching the matters he may
17 be authorized to inquire and examine into.

18 (2) He may subpoena and, by attachment, compel the attendance of any
19 person in this state to testify under oath before him in relation to the
20 affairs of the state bank, Arkansas bank holding company, or subsidiary trust
21 company. All witnesses who appear in obedience to a subpoena shall be
22 entitled to and shall receive the same per diem fees and mileage as witnesses
23 in civil cases in the circuit courts of this state.

24 (c)(1) The representative of the Department making the examination shall
25 make a detailed report of the financial institution so examined, which report
26 shall be filed in the office of the Commissioner.

27 (2) All comments or criticisms contained in each report shall be
28 presented to the board of directors by the management of the financial
29 institution so examined promptly after receipt thereof.

30

31 23-46-507. Information furnished state or federal agencies.

32 (a) The Commissioner may share with or furnish to any state or federal
33 financial institutions examiner or regulatory agency, copies of any or all
34 examinations or any information with reference to the condition of the affairs
35 of any state bank, subsidiary trust company, or other institution which the
36 Department regulates.

1 (b) The Commissioner is authorized to enter into cooperative
 2 arrangements with other state and federal financial institutions regulatory
 3 agencies to achieve the purposes of this act.

4

5 23-46-508. Noncooperation with examiners.

6 (a) The Commissioner may revoke a state bank's or subsidiary trust
 7 company's authority to transact business and may proceed to wind up its
 8 business whenever any officer of the state bank or subsidiary trust company:

9 (1) Refuses to submit the books, papers, and effects thereof to the
 10 inspection of the Commissioner or examiners; or

11 (2) In any manner obstructs or interferes with the Commissioner, or
 12 examiner, in the discharge of his duties; or

13 (3) Refuses to be examined on oath touching the affairs of the financial
 14 institution.

15 (b) The Commissioner may issue a cease and desist order whenever an
 16 officer of any financial institution acts in any manner described in
 17 subsections (a)(1) - (a)(3) of this section.

18

19 23-46-509. Assessment fees, application fees, and other Department
 20 fees.

21 (a) Every state bank and subsidiary trust company shall pay to the
 22 Department, within ten (10) days after notice from the Commissioner in the
 23 months of January and July of each year, an assessment fee which will be
 24 charged in accordance with an assessment fee schedule approved by the
 25 Commissioner.

26 (b) The Commissioner, with the approval of the Banking Board, shall
 27 also have the authority to establish a schedule of fees to be charged by the
 28 Department relative to applications which are reviewed by the Department, as
 29 well as a schedule of other fees to be charged for service performed by the
 30 Department.

31 (c) For each examination made in excess of two (2) per year, the state
 32 bank or subsidiary trust company so examined shall pay an additional
 33 assessment equal to the January assessment of the year in which the excess
 34 examination is made.

35 (d)(1) The assessments provided for in this section may be reduced by
 36 the Commissioner if the assessments, with other fees received by the

1 Department, produce a greater sum than is required to pay the expenses of the
2 Department.

3 (2) The assessments may be increased if not sufficient, in connection
4 with other fees received as aforesaid, to defray the expenses of the
5 Department.

6

7 23-46-510. Failure to make report or pay fees -- Penalty.

8 (a) Any financial institution that refuses or fails, for thirty (30)
9 days after notice from the Commissioner, to make any report to the
10 Commissioner, or fails to pay any fees for ten (10) days after the date of
11 notice by the Commissioner, shall be given an additional notice through
12 personal service or by letter from such person of the office of the
13 Commissioner as the Commissioner may designate.

14 (b) If the failure continues for ten (10) days after the receipt of the
15 additional notice, then the Commissioner may assess a monetary penalty against
16 the financial institution for each separate failure or refusal of one hundred
17 dollars (\$100) each day for the first thirty (30) days after receiving the
18 notice of delinquency from the Commissioner and one thousand dollars (\$1,000)
19 per day of violation for every day thereafter. Alternatively, in the case of
20 a state bank or subsidiary trust company, if the failure continues for ten
21 (10) days after the receipt of the additional notice, the Commissioner may
22 take charge of the state bank or subsidiary trust company, as provided in case
23 of insolvency.

24

25 23-46-511. Retention of records.

26 (a) Every state bank or subsidiary trust company shall retain its
27 business records for such periods as are or may be prescribed by or in
28 accordance with the terms of this section.

29 (b) Each state bank or subsidiary trust company shall retain
30 permanently the minute books of meetings of its stockholders and directors,
31 its capital stock ledger and capital stock certificate ledger or stubs, and
32 all records which the Commissioner and Banking Board shall, in accordance with
33 the terms of this section, require to be retained permanently.

34 (c) All records, other than those described in subsection (b) hereof,
35 shall be retained for such periods as the Commissioner and Banking Board, in
36 accordance with the terms of this section, shall prescribe.

1 (d) The Commissioner shall issue regulations, with the approval of the
 2 Banking Board, prescribing the period for which records must be maintained.
 3 Such periods may be permanent or for a term of years.

4 (e) Any state bank or subsidiary trust company may dispose of any
 5 records which have been retained for the period prescribed in accordance with
 6 the terms of this section and shall, after it has disposed of a record,
 7 thereafter be under no duty to produce such record in any action or
 8 proceeding.

9 (f) In lieu of retention of the original records, any state bank or
 10 subsidiary trust company may cause any or all of its records, and records held
 11 at any time in its custody, including those held by it as a fiduciary, to be
 12 photographed or otherwise reproduced in permanent form. Any such photograph
 13 or other reproduction shall have the same force and effect as the original
 14 thereof and be admitted into evidence equally as with the original.

15

16 23-46-512. Changes in chief executive officer and directors.

17 Every financial institution shall report promptly to the Commissioner
 18 any change for whatever reason in the chief executive officer and directors,
 19 including in its report a statement of the past and current business and
 20 professional affiliations of the new chief executive officer and directors.

21

22 Chapter 47

23 BANK POWERS

24 SUBSIDIARY TRUST COMPANIES

25 Subchapter 1 -- POWERS GENERALLY

26

27 23-47-101. Powers of State banks generally.

28 (a) Subject to any Department regulations, and consistent with any
 29 restrictions imposed by this act, each state bank shall, unless it shall be
 30 determined to be unsafe and unsound by the Commissioner, and without specific
 31 mention thereof in its articles of incorporation, have the following powers
 32 and be permitted, in addition to other powers conferred upon it by other
 33 provisions of law:

34 (1) To receive by any means money for deposit and to provide by its
 35 rules or by agreement for the terms of withdrawal and payment of interest
 36 thereon pursuant to the provisions of subchapter 2 of this chapter;

1 (2) To receive by any means money for transmission to another person and
2 to transmit money by any means to another person;

3 (3) To buy, sell, and exchange coin and bullion;

4 (4) To buy, sell and exchange bonds and certificates of indebtedness
5 issued or guaranteed by the United States, its agencies and instrumentalities
6 thereof, the state of Arkansas or of any other state, or of any city, county,
7 school district, or other municipal corporation, improvement district, public
8 facilities board or other agencies or instrumentalities of such state or
9 states;

10 (5) To purchase and sell securities (other than bonds and certificates
11 of indebtedness described in subsection (4) of this section) and stock without
12 recourse, solely upon the order, and for the account of customers and other
13 persons, and in no case for its own account;

14 (6) To purchase, sell, and exchange for its own account securities
15 pursuant to the provisions of 23-47-401;

16 (7) To lend money, either without security or upon such security as the
17 bank may require, pursuant to the provisions of subchapter 5 of this chapter;

18 (8)(A) To issue capital notes, with or without conversion features, with
19 the prior written approval of the Commissioner; and

20 (B) To otherwise become indebted to other persons through other types of
21 obligations, including purchase money obligations, leases, Federal Home Loan
22 Bank and Federal Reserve Bank advances, federal funds transactions, securities
23 repurchase agreements, all without limitations on interest rates and term;

24 (9) To have such amounts of authorized but unissued stock as it may deem
25 appropriate;

26 (10) To purchase insurance, including key-man insurance, and to
27 establish employee and director benefit plans including, without limitation,
28 stock options, and stock purchase and compensation plans;

29 (11) To own and lease personal property acquired upon the specific
30 request and for the use of a customer and to incur obligations incident
31 thereto, the lease obligation to be subject to borrower loan limits and to a
32 schedule of periodic regular rental payments which shall be consistent with a
33 timely recovery by the bank of its cost for the leased property;

34 (12) To make contributions to or for the benefit of the following:

35 (A) The United States, any state, territory, or political subdivision
36 thereof, the District of Columbia, or any possession of the United States, for

1 exclusively public purposes;

2 (B) A corporation, foundation, trust, community chest, or other
3 organization created or organized in the United States, or any state or
4 territory, or the District of Columbia, or any possession of the United
5 States, exclusively for religious, charitable, scientific, veteran
6 rehabilitation service, civic enterprise, literary or educational purposes or
7 for the prevention of cruelty to children or animals, no part of the net
8 earnings of which inures to the benefit of any private shareholder or
9 individual, and no substantial part of the activities of which is carrying on
10 propaganda or otherwise attempting to influence legislation; or

11 (C) Other lawful expenditures, contributions and donations, to the
12 extent authorized, approved or ratified by action of the board of directors of
13 the bank, except as otherwise specifically provided or limited by its articles
14 of incorporation, its bylaws, or by resolution adopted by its stockholders;

15 (13) To service loans made by it or by others, whether or not held by
16 the bank;

17 (14) To warehouse or act as agent in warehousing mortgages and other
18 loans;

19 (15) With the prior approval of the Commissioner and subject to such
20 conditions as may be prescribed by the Commissioner, to provide messenger
21 service between the bank and its customers;

22 (16) To engage in any activities which are a part of the business of
23 banking or incidental thereto by means of an operating subsidiary pursuant to
24 the provisions of 23-47-601;

25 (17) To invest in bank service companies pursuant to the provisions of
26 23-47-603;

27 (18) To invest in a capital development corporation pursuant to the
28 provisions of 23-47-604;

29 (19) To invest in a community development company pursuant to the
30 provisions of 23-47-605;

31 (20) To invest in small business investment companies and minority
32 enterprise small business investment companies as defined by the Small
33 Business Act of 1958, as amended, pursuant to the provisions of 23-47-606;

34 (21) To invest in corporations organized under the Edge Act as amended,
35 pursuant to the provisions of 23-47-606;

36 (22) To operate a travel agency;

- 1 (23) To engage in leasing real property;
- 2 (24) To act as escrow agent and closing agent;
- 3 (25) To act as a fiscal or transfer agent, assignee, receiver and
4 depository;
- 5 (26) To act as an executor, administrator, trustee or other fiduciary
6 pursuant to the provisions of subchapter 7 of this chapter;
- 7 (27) To guaranty signatures;
- 8 (28) To provide third party payment services;
- 9 (29) To issue, advise and confirm letters of credit;
- 10 (30) To act as an agent to collect checks, drafts and other items of
11 commercial paper, to become a member of a clearing house and to grant security
12 interests in its assets for its qualification therein;
- 13 (31) To receive property as custodian for safekeeping;
- 14 (32) To lease safe-deposit boxes pursuant to the provisions of
15 subchapter 9 of this chapter;
- 16 (33) To enter into agreements to provide for losses arising from the
17 cancellation of outstanding loans upon the death of borrowers;
- 18 (34) Through a separate subsidiary, to act as agent in the sale of title
19 insurance and perform title searches and other abstractor services;
- 20 (35) To invest in clearing corporations and banker's banks;
- 21 (36) To invest in bank premises real estate pursuant to the provisions
22 of 23-47-103;
- 23 (37) To acquire, develop, and dispose of real estate through foreclosure
24 or in lieu of foreclosure of debts previously contracted in the ordinary
25 course of its banking business, including single family lots and single family
26 residences consisting of one (1) through four (4) family units.
- 27 (b) In addition to the foregoing, a state bank may exercise any other
28 powers which are incidental to the business of banking.
- 29 (c) In addition to the powers conferred upon state banks under this or
30 any other law of this state, upon action of the Commissioner authorizing state
31 banks to undertake such activities, a state bank may engage in any banking
32 activities in which state banks could engage were they acting as national
33 banks at the time such authority is granted.
- 34 (d) If a state bank or bank holding company is located in a town with a
35 population of fewer than two thousand five hundred (2,500) people, according
36 to the latest federal decennial census, the bank or bank holding company may

1 acquire, purchase, or construct a dwelling for use as the residence of the
2 bank's or bank holding company's chief executive officer as part of his
3 compensation. The expenditure for the dwelling shall not exceed one hundred
4 thousand dollars (\$100,000).

5

6 23-47-102. Acquisition and disposition of own stock.

7 (a) No state bank shall be the purchaser or holder of its own capital
8 stock, unless such security or purchase shall be necessary to prevent loss
9 upon a debt previously contracted in good faith.

10 (b) Stock so purchased or acquired shall be sold or disposed of as
11 expeditiously as possible within twenty-four (24) months of its purchase or
12 acquisition. After the expiration of twenty-four (24) months, any such stock
13 shall not be considered as part of the assets of the state bank.

14 (c) The provisions of this section shall not apply to the payment by a
15 state bank of the value of shares held by shareholders dissenting from any
16 proposed merger, consolidation, purchase or assumption, or other
17 reorganization involving a plan of exchange of any of the stock of the state
18 bank, who perfect their statutory rights as dissenting shareholders.

19

20 23-47-103. Acquisition of bank premises.

21 (a) A state bank or subsidiary trust company, acting with the prior
22 approval of the Commissioner, may acquire bank premises to be used, occupied,
23 or owned by it.

24 (b)(1) Any state bank acting with the prior approval of the Commissioner
25 may cause the title to its bank premises, now owned or at any time hereafter
26 acquired by the bank to be held by a subsidiary corporation which shall be
27 wholly owned by the bank.

28 (2) A state bank having such a subsidiary may rent the bank premises or
29 any portion thereof from the subsidiary, or acquire the title to said premises
30 by purchase from the subsidiary or through its liquidation, under such terms
31 and conditions as may be approved by the Commissioner.

32 (c) A state bank may not, except with the approval of the Commissioner,
33 invest in the bank premises or in the stock, bonds, debentures, or other
34 obligations of the subsidiary owning the bank premises, or make loans to, or
35 upon the security of the stock of the subsidiary, if the aggregate of all such
36 investments or loans, together with the amount of any indebtedness incurred by

1 the subsidiary, will exceed the capital base of such state bank.

2

3 23-47-104. Prohibition on engaging in business as real estate salesmen
4 or brokers.

5 Banks, bank holding companies, and subsidiaries of banks or bank holding
6 companies, may not engage in business as real estate salesmen or brokers.

7

8

Subchapter 2 -- DEPOSITS

9

10 23-47-201. Notice of rules governing deposits.

11 (a) Banks shall have the power to make rules governing deposits,
12 including provisions for reasonable notice, not to exceed ninety (90) days,
13 for the withdrawal of deposits and for changes in or amendments to those rules
14 to be made by the bank without approval of the depositor. Notice of the rules
15 and all changes therein shall be given to each customer whose deposits are
16 affected by such rules, either by delivery or mailing of a copy to such
17 customer or by posting them in a conspicuous area in the main office and in
18 all branch offices of the bank. If the rules are stated on a signature card
19 or other document signed by the customer, the bank shall be deemed to have
20 given notice of the rules for purposes of this provision even if such
21 signature card or document is returned to the bank.

22 (b) Rules so made shall be a valid contract between the depositor and
23 the bank, subject to the right of the bank to change or amend the rules in the
24 manner provided in the rules.

25

26 23-47-202. Deposits by minors.

27 When any deposit is made in any bank by a minor, the bank may pay to the
28 depositor the sums due him or her and the receipt or check of the minor shall
29 be, in all respects, valid in law.

30

31 23-47-203. Securing of deposits.

32 (a) It shall be lawful for any state bank to secure deposits made with
33 it by any of the following:

34 (1) The United States, the state of Arkansas, any county of this state,
35 any municipality of this state, or any agency, corporate instrumentality, or
36 political subdivision of any of the foregoing;

- 1 (2) Any university or college supported by this state;
- 2 (3) Any school district of this state;
- 3 (4) Any community college district of this state;
- 4 (5) Any relief body of the United States or of this state;
- 5 (6) Any road, drainage, levee, bridge, street, sewer, paving, or other
6 improvement district organized under the laws of this state;
- 7 (7) Any regional water distribution district organized under the laws of
8 this state;
- 9 (8) Any federal agency;
- 10 (9) The United States Postal Service;
- 11 (10) Any receiver of any state or federal court, whether appointed in
12 proceedings pending in this state or elsewhere;
- 13 (11) Any referee in bankruptcy;
- 14 (12) Any receiver, trustee, or operating officials appointed by any
15 federal court in any bankruptcy, debt-adjustment, or composition proceeding
16 pending within this state or elsewhere;
- 17 (13) Any pension or retirement fund for employees of any county or
18 municipality in this state or any agency, corporate instrumentality, or
19 political subdivision of any of the foregoing; and
- 20 (14) The Treasurer of this state.
- 21 (b) It shall be lawful for any state bank to secure the deposit with it
22 of the following described funds:
- 23 (1) Any funds deposited in the bank and which are held in trust by the
24 bank, awaiting investment or distribution if not prohibited by the instrument
25 or judgment creating the trust; and
- 26 (2) Any funds deposited for such other purposes as are approved by the
27 Commissioner.
- 28 (c)(1) A state bank may secure the deposits described in subsections (a)
29 and (b) of this section, subject to the depositor's discretion regarding the
30 suitability of the collateral, by the pledge or escrow of the assets of the
31 bank consisting of any investment in which a state bank may invest in without
32 limitation, pursuant to 23-47-401.
- 33 (2) The aggregate market value of assets pledged or escrowed to secure
34 the deposit of funds by any single depositor shall not at any time exceed the
35 maximum limit as determined by the Commissioner.
- 36 (d) Notwithstanding any other provision of this section, or the

1 provision of any other law requiring security for deposit of funds in the form
2 of the deposit or pledge of securities, security for such deposits shall not
3 be required to the extent that such deposits are insured under the provisions
4 of the Federal Deposit Insurance Act.

5 (e) The powers herein conferred upon state banks are cumulative to such
6 similar powers as they now may hold under existing laws.

7

8 23-47-204. Multiple-party deposits.

9 (a) As used in this section, "multiple-party deposit account" means a
10 deposit account (i) established in the names of, (ii) payable to, or (iii) in
11 form subject to withdrawal by two (2) or more natural persons.

12 (b)(1) When opening a multiple-party deposit account, or amending an
13 existing deposit account so as to create a multiple-party deposit account, a
14 bank shall utilize account documents which enable the depositor to designate
15 ownership interest therein in terms substantially similar to one or more of
16 the following:

17 (A) Joint tenants with right of survivorship;

18 (B) Tenants in common;

19 (C) Tenants by the entirety;

20 (D) Payable on death;

21 (E) Totten or tentative trust; and

22 (F) Such other deposit designation as may be acceptable to the bank.

23 (2) Account documents which enable the depositor to indicate the
24 depositor's intent of the ownership interest in any multiple-party deposit
25 account may include any of the following:

26 (A) The signature card;

27 (B) The deposit agreement;

28 (C) A certificate of deposit;

29 (D) A document confirming purchase of a certificate of deposit; or

30 (E) Such other document acceptable to the bank which indicates the
31 intent of the depositor.

32 (3) The designation of ownership interest contained in account
33 documents shall be conclusive evidence in any action or proceeding involving
34 the deposit account of the intention of all depositors to vest title to the
35 deposit account in the manner specified in the account documents.

36 (4) Nothing in this section shall be construed to require a bank to

1 offer any particular type of multiple-party deposit account.

2 (c) Multiple-party deposit accounts which do not expressly designate
 3 ownership interest as tenants in common, payable on death, or Totten or
 4 tentative trust shall constitute (i) a joint tenant with right of survivorship
 5 deposit account, if the depositors have not indicated in the account documents
 6 that the depositors are married to each other and (ii) a tenants by the
 7 entirety deposit account, if the depositors have indicated in the account
 8 documents that they are married to each other, whether or not they are at that
 9 time husband and wife.

10 (d)(1) A joint tenant with right of survivorship deposit account may be
 11 paid to or on the order of any one (1) of the depositors during their lifetime
 12 unless a contrary written designation, in form acceptable to the bank, is
 13 given to the bank, or to or on the order of any one (1) of the survivors of
 14 them after the death of any one (1) or more of them.

15 (2) A tenancy by the entirety deposit account may be paid to or on the
 16 order of either depositor during their lifetime, or to or on the order of the
 17 survivor after the death of one (1) of them.

18 (3)(A) A tenants in common deposit account may be paid, prior to the
 19 receipt by the bank of a specific written notice of death of a depositor, to
 20 or on the order of any one (1) depositor unless a contrary written designation
 21 in form acceptable to the bank, is given to the bank. Upon receipt of a
 22 specific written notice of death of a depositor in form acceptable to the
 23 bank, the respective pro rata parts of a tenants in common deposit account may
 24 be paid to or on the order of the surviving tenant in common, and to the
 25 estate of the deceased depositor.

26 (B) All tenants in common deposit accounts shall be deemed to be owned
 27 pro rata by the depositors unless a contrary written designation in form
 28 acceptable to the bank, is given to the bank.

29 (e) A payable on death deposit account is created when the depositor
 30 indicates on the account documents that, on the death of the person named as
 31 holder, the deposit account shall be paid to or held by another person. Upon
 32 the death of the person named as holder, the person designated by him and who
 33 have survived him shall be the owner of the deposit account and, if more than
 34 one (1) person shall be the owners of the deposit account, ownership shall be
 35 as joint tenants with right of survivorship. During the lifetime of the
 36 depositor, he may change the designation of the person who are to be the owner

1 at his death by written direction in form acceptable to the bank.

2 (f) A Totten or tentative trust deposit account is created when the
3 depositor indicates on the account document that he is the trustee for another
4 person and there is no written trust agreement which affects the deposit
5 account. Upon the death of the person named as trustee, the other person
6 shall be the owner of the deposit account and, if more than one (1) person
7 shall be the owners of the deposit account, ownership shall be as joint
8 tenants with right of survivorship. During the lifetime of the person named
9 as trustee, he may change the classification of the person he is trustee for,
10 by written direction in form acceptable to the bank.

11 (g) A bank shall also pay partial withdrawal requests, accept pledges of
12 a deposit account, and otherwise deal with the deposit account in the same
13 manner it pays the deposit account pursuant to the provisions of this section.

14 (h) Any payment of a deposit account, acceptance of pledge of a deposit
15 account, change in the form of a deposit account, or otherwise dealing with a
16 deposit account by a bank in the manner provided by this section shall be a
17 complete and valid release and discharge of the bank as to the amount paid or
18 action taken. No bank shall have any liability whatsoever for the way in
19 which the ownership interest of a deposit account is designated when it is
20 opened or in which a deposit account is amended if the deposit account is
21 opened or amended as the depositor specified in the account document.

22 (i) No bank making any payment in accordance with the provisions of this
23 section shall thereby be liable for any estate, inheritance or succession
24 taxes which may be due.

25 (j) The terms written direction and "written designation" shall not be
26 construed to require that the depositor affix his signature to an instrument,
27 unless the bank requires the signature of the depositor to the instrument.

28

29 23-47-205. Adverse claim to deposit.

30 Notice to a bank of an adverse claim to a deposit standing on its books
31 to the credit of any person shall not be sufficient to require the bank to pay
32 the deposit to the adverse claimant, or otherwise recognize the adverse claim,
33 unless the adverse claimant also:

34 (1) Procures a restraining order, injunction, or other appropriate
35 process, which has become final and not further appealable, against the bank
36 from a court of competent jurisdiction in a cause therein instituted by him

1 wherein the person to whose credit the deposit stands is made a party and
 2 served with summons; or

3 (2) Executes to the bank, in form and with sureties acceptable to it, a
 4 bond indemnifying the bank from any and all liability, loss, damage, costs,
 5 and expenses for and on account of the payment of the adverse claim or the
 6 dishonor of the check or other order of the person to whose credit the deposit
 7 stands on the books of the bank.

8

9 23-47-206. Settlement of checks at par -- Exception.

10 No state bank shall settle any check drawn on it against an account with
 11 a sufficient balance otherwise than at par. However, the provisions of this
 12 section shall not apply with respect to the settlement of a check sent to a
 13 state bank for special handling or as a special collection item.

14

15 23-47-207. Payment of overdrafts -- Liability of officer or employee.

16 Any officer or employee who knowingly pays out the funds of any state
 17 bank upon the check, order, or draft of any individual, firm, corporation, or
 18 association which does not have on deposit with the bank a sum equal to the
 19 check, order, or draft is personally liable to it for the amount so paid
 20 unless the drawer of such check, order, or draft has previously arranged with
 21 the bank for a line of credit sufficient to cover the payment or unless the
 22 payment was made pursuant to a general authorization approved by the board of
 23 directors for the officer or employee to cover the payment. However, the
 24 board of directors may ratify the overdraft and relieve the employee from
 25 liability.

26

27 23-47-208. Deferred income investment accounts.

28 (a) On behalf of depositors, state banks may create and open deferred
 29 income investment accounts of the following types:

30 (1) The depositor makes a deposit of a lump sum, and the bank agrees to
 31 pay the depositor an agreed monthly or annual payment for life or for a term
 32 certain beginning immediately or at some time in the future;

33 (2) The depositor makes a deposit periodically on an agreed basis, and
 34 the bank agrees to pay the depositor, on a periodic basis beginning at some
 35 time in the future for life or a term certain, an agreed monthly or annual
 36 payment.

1 (b) The depositor and the state bank may agree that:

2 (1) A partial refund of the deposit may occur upon specified events, or
 3 no refund may occur;

4 (2) The depositor may elect to stop payments from the bank for a term;

5 (3) The payments may go to designated beneficiaries in all cases both
 6 before and after death of the depositor;

7 (4) The amount of the payments to the bank and to the depositor will be
 8 fixed for the term agreed upon; or

9 (5) The payment to the depositor will be determined by an index or
 10 criteria beyond the control of the depositor or bank.

11 (c) The Commissioner shall promulgate such rules and regulations as may
 12 be necessary and proper to carry out the intent and purpose of this section
 13 and to issue cease and desist orders to any state bank found to be violating
 14 this section or the Department regulations. These Department regulations
 15 shall incorporate §§ 23-81-121 -- 23-81-128, where applicable.

16 (d) The deferred income investment accounts allowed in this section
 17 shall be exempt from §§ 23-42-501 and 23-42-502.

18 (e) It is the intent of this section that distributions from deferred
 19 income investment accounts be treated as nontaxable to the greatest extent
 20 possible under Section 72 of the Internal Revenue Code of 1986.

21

22 Subchapter 3 -- AGENCY DESIGNATION ON CERTIFICATES OF DEPOSIT

23

24 23-47-301. Definitions.

25 In this part:

26 (1) Account means a contract of deposit between a depositor and a
 27 bank, and includes a checking account, savings account and certificate of
 28 deposit;

29 (2) Agent means a person authorized to make account transactions for a
 30 party;

31 (3) Beneficiary means a person named as one to whom sums on deposit in
 32 an account are payable on request after the death of all parties or for whom a
 33 party is named as trustee;

34 (4) Devisee means any person designated in a will to receive a
 35 testamentary disposition of real or personal property;

36 (5) Party means a person who, by the terms of an account, has a

1 present right, subject to request, to payment from the account other than as a
2 beneficiary or agent;

3 (6) Payment of sums on deposit includes withdrawal, payment to a party
4 or third person pursuant to check or other request, and a pledge of sums on
5 deposit by a party, or a setoff, reduction, or other disposition of all or
6 part of an account pursuant to a pledge; and

7 (7) Personal representative includes an executor, administrator,
8 successor personal representative, special administrator, and persons who
9 perform substantially the same function under the law governing their status.

10

11 23-47-302. Scope of subchapter.

12 (a) This subchapter applies to accounts in this state.

13 (b) This subchapter does not apply to:

14 (1) An account established for a partnership, joint venture, or other
15 organization for a business purpose;

16 (2) An account controlled by one (1) or more persons as an agent or
17 trustee for a corporation, unincorporated association, or charitable or civic
18 organization; or

19 (3) A fiduciary or trust account in which the relationship is
20 established other than by the terms of the account.

21

22 23-47-303. Forms.

23 A contract of deposit that substantially contains the following form
24 establishes an agency account, and the account is governed by the provisions
25 of this subchapter applicable to agency accounts:

26 AGENCY (POWER OF ATTORNEY) DESIGNATION

27 Agents may make account transactions for parties but have no ownership
28 or rights at death unless named as POD beneficiaries. [To Add Agency
29 Designation To Account, Name One Or More Agents].

30

31 _____

32

33 [Select One and Initial]:

34 AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

35 AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

36

1 23-47-304. Designation of agent.

2 (a) Unless the terms of an agency designation provide that the authority
3 of the agent terminates on disability or incapacity of a party, the agent's
4 authority survives disability and incapacity. The agent may act for a
5 disabled or incapacitated party until the authority of the agent is
6 terminated.

7 (b) Death of the sole party or last surviving party terminates the
8 authority of an agent.

9 (c) An agent in an account with an agency designation has no beneficial
10 right to sums on deposit.

11

12 23-47-305. Payment to designated agent.

13 On request of an agent under an agency designation for an account, a
14 bank may, unless it actually knows that the authority of agency has
15 terminated, pay to the agent sums on deposit in the account.

16

17 23-47-306. Payment to minor.

18 If a bank is required or permitted to make payment pursuant to this
19 subchapter to a minor designated as a beneficiary, payment may be made
20 pursuant to the Uniform Transfers to Minors Act, § 9-26-201 et seq.

21

22 23-47-307. Discharge.

23 (a) Payment made pursuant to this subchapter in accordance with an
24 agency account discharges the bank from all claims for amounts so paid,
25 whether or not the payment is consistent with the beneficial ownership of the
26 account as between parties, beneficiaries, or their successors. Payment may
27 be made whether or not a party, beneficiary, or agent is disabled,
28 incapacitated, or deceased when payment is requested, received, or made.

29 (b) Protection under this section does not extend to payments made after
30 a bank has received written notice from a party, or from the personal
31 representative, surviving spouse, or heir or devisee of a deceased party, to
32 the effect that payments in accordance with the terms of the agency account
33 should not be permitted and the bank has had a reasonable opportunity to act
34 on it when payment is made. Unless the notice is withdrawn by the person
35 giving it, the successor of any deceased party must concur in a request for
36 payment if the bank is to be protected under this section. Unless a bank has

1 been served with process in an action or proceeding, no other notice or other
2 information shown to have been available to the bank affects its right to
3 protection under this section.

4 (c) A bank that receives written notice pursuant to this section or
5 otherwise that has reason to believe that a dispute exists as to the rights of
6 the parties may refuse, without liability, to make payments in accordance with
7 the terms of the agency account.

8 (d) Protection of a bank under this section does not affect the rights
9 of parties in disputes between themselves or their successors concerning the
10 beneficial ownership of sums on deposit in agency accounts or payments made
11 from agency accounts.

12

13 23-47-308. Setoff.

14 Without qualifying any other statutory right to setoff or lien and
15 subject to any contractual provision, if a party is indebted to a bank, the
16 bank has a right to setoff against the agency account. The amount of the
17 agency account subject to setoff is the proportion to which the party is, or
18 immediately before death was, beneficially entitled or, in the absence of
19 proof of that proportion, an equal share with all parties.

20

21 23-47-309. Effect on other laws.

22 This subchapter is supplemental to all laws pertaining to the deposit of
23 funds in banks.

24

25 Subchapter 4 - INVESTMENTS.

26

27 23-47-401. Investment powers and limitations.

28 (a) A state bank may invest its funds without limitation in the
29 following:

30 (1) Direct obligations of the United States Government;

31 (2) Obligations of agencies and instrumentalities created by act of the
32 United States Congress and authorized thereby to issue securities or evidences
33 of indebtedness, regardless of guarantee of repayment by the United States
34 Government;

35 (3) Obligations the principal and interest of which are fully guaranteed
36 by the United States Government or an agency or an instrumentality created by

1 an act of the United States Congress and authorized thereby to issue such
 2 guarantee;

3 (4) Obligations the principal and interest of which are fully secured,
 4 insured, or covered by commitments or agreements to purchase by the United
 5 States Government or an agency or instrumentality created by an act of the
 6 United States Congress and authorized thereby to issue such commitments or
 7 agreements;

8 (5) General obligations of the states of the United States and of the
 9 political subdivisions, municipalities, commonwealths, territories or insular
 10 possessions thereof;

11 (6) Obligations issued by the State Board of Education under authority
 12 of the State Constitution or applicable statutes;

13 (7) Warrants of political subdivisions of the state of Arkansas and
 14 municipalities thereof having maturities not exceeding one (1) year;

15 (8) Prerefunded municipal bonds, the principal and interest of which are
 16 fully secured by the principal and interest of a direct obligation of the
 17 United States Government;

18 (9) The sale of federal funds with a maturity of not more than one (1)
 19 business day;

20 (10) Demand, savings, or time deposits or accounts of any depository
 21 institution chartered by the United States, any state of the United States, or
 22 the District of Columbia, provided funds invested in such demand, savings, or
 23 time deposits or accounts are fully insured by a federal deposit insurance
 24 agency;

25 (11) Repurchase agreements that are fully collateralized by direct
 26 obligations of the United States Government, and general obligations of any
 27 state of the United States or any political subdivision thereof, provided that
 28 any such repurchase agreement shall provide for the taking of delivery of such
 29 collateral, either directly or through an authorized custodian;

30 (12) Securities of, or other interest in, any open-end type investment
 31 company or investment trust registered under the Investment Company Act of
 32 1940, and which is defined as a _money market fund_ under 17 CFR § 270.2a-7,
 33 provided that the portfolio of such investment company or investment trust is
 34 limited principally to United States Government obligations and to repurchase
 35 agreements fully collateralized by United States Government obligations, and
 36 provided further that any such investment company or investment trust shall

1 take delivery of such collateral either directly or through an authorized
2 custodian.

3 (b) A state bank may invest no more than twenty percent (20%) of its
4 capital base in any single investment of the following types:

5 (1) Corporate debt obligations (including commercial paper) of any
6 corporation that is not an affiliate or subsidiary of the bank;

7 (2) Revenue bond issues of any state of the United States or any
8 municipality or any political subdivision thereof;

9 (3) Industrial development bonds for corporate obligors issued through
10 any state of the United States or any political subdivision thereof;

11 (4) Securities of, or other interests in, an open-end or closed-end
12 management type investment company or investment trust registered under the
13 Investment Company Act of 1940, provided that the portfolio of such investment
14 company or investment trust is limited to United States Government obligations
15 and to repurchase agreements fully collateralized by United States Government
16 obligations, and provided further that any such investment company or
17 investment trust shall take the delivery of such collateral either directly or
18 through an authorized custodian;

19 (5) Securities or other interests issued, assumed or guaranteed by the
20 International Bank for Reconstruction and Development, the Inter-American
21 Development Bank, the European Bank for Reconstruction and Development, the
22 Asian Development Bank or the African Development Bank;

23 (6) Uninsured demand, savings, or time deposits or accounts of any
24 depository institution chartered by the United States, any state of the United
25 States, or the District of Columbia.

26 (c) Subject to such additional restrictions and limitations as may be
27 imposed by the Commissioner, a state bank may invest in any other investment
28 securities which are not described in subsections (a) or (b) hereof to the
29 extent that such investment securities are authorized for national banks.

30 (d) A state bank may invest in any investment not described in
31 subsections (a) and (b) hereof as may be authorized by Department regulations.

32

33

Subchapter 5 -- LOANS

34

35 23-47-501. Loan limits -- Maximum generally.

36 (a) The total indebtedness to any state bank of any person shall at no

1 time exceed twenty percent (20%) of the capital base of the bank.

2 (b)(1) Obligations of a person as endorser or guarantor, accommodation
 3 or otherwise, of notes or other obligations shall be included in that person's
 4 loan limit.

5 (2)(A) However, in the case of endorsed or guaranteed obligations on
 6 consumer loans, if the financial responsibility of the primary debtor is
 7 reasonably adequate, and if an officer of the state bank designated by the
 8 board of directors for that purpose certifies in writing that the liability of
 9 the primary debtor has been evaluated and that the bank is relying primarily
 10 on such primary debtor for payment, the twenty percent (20%) limitation shall
 11 be applied to each primary debtor but not to the liability, in such capacity,
 12 of the endorser or guarantor;

13 (B) Consumer loans for the purpose of this section shall be considered
 14 to be credit extended to a natural person in which the money is to be used
 15 primarily for personal, family, or household purposes.

16 (c) A loan or group of loans that are within the legal loan limit of a
 17 state bank at the time the loan or loans are made shall be valid for legal
 18 loan limit purposes until maturity, as stated in the original contract,
 19 regardless of fluctuations in the bank's legal loan limit; provided, however,
 20 that if a bank's legal loan limit is reduced due to fluctuations in its
 21 capital base, a loan or group of loans to a borrower or borrowers that were
 22 within the legal loan limit prior to the reduction may become in violation of
 23 the bank's reduced legal loan limit upon the extension, renewal or advancement
 24 of additional funds on such loan or group of loans occurring after the
 25 reduction in the bank's legal loan limits. State banks are required to
 26 calculate their legal loan limits on a quarterly basis to coincide with the
 27 requirement to calculate their capital base.

28 (d)(1) If in any instance it shall appear, as determined by the
 29 Commissioner, that the interests of a group composed of individuals,
 30 partnerships, unincorporated associations, or corporations are so interrelated
 31 that, from a credit standpoint, applying standard and customary banking
 32 practice, they should be considered as a single unit for the purposes of
 33 extensions of credit, the total indebtedness of these interrelated customers
 34 shall be combined and treated as the indebtedness of a single customer in
 35 applying the loan limit.

36 (2) A state bank shall not be deemed to have violated this section

1 solely by reason of the fact that the indebtedness of a group held by the bank
 2 exceeds the limitation of this section at the time the Commissioner determines
 3 that the indebtedness of the group must be combined. However, the state bank
 4 shall, if required by the Commissioner, dispose of indebtedness of the group
 5 in the amount of excess of the limitation of this section within such
 6 reasonable time as shall be fixed by the Commissioner.

7

8 23-47-502. Loan limits -- Inclusions and exceptions.

9 (a) The following loans and other forms of indebtedness shall not be
 10 included in the limitation of twenty percent (20%) imposed by 23-47-501 and
 11 may be made or acquired without being subject to any loan limit:

12 (1) Obligations in the form of drafts or bills of exchange drawn in good
 13 faith against actually existing values;

14 (2) Nonconforming assets acquired as a result of acquisition of a failed
 15 bank or savings and loan association, so long as a plan for divestiture within
 16 a reasonable amount of time is approved by the Commissioner;

17 (3) Obligations drawn in good faith against actually existing values and
 18 fully secured by goods or commodities in process of shipment may be acquired
 19 without limit;

20 (4) Obligations in the form of banker's acceptances of other banks;

21 (5) Obligations secured by investments which the state bank, pursuant to
 22 23-47-401 could invest in without limit, having a market value at all times at
 23 least equal to the principal balance of the obligation.

24 (b)(1) The loan limit of twenty percent (20%) provided by 23-47-501
 25 shall be modified so that a loan limit not to exceed sixty percent (60%) shall
 26 apply to obligations secured by transferable documents of title covering:

27 (A) Livestock; or

28 (B) Readily marketable and nonperishable commodities or staples fully
 29 insured, if of a type that is customarily insured.

30 (2) The property in each instance must have a value of at least one
 31 hundred fifteen percent (115%) of the amount of the secured obligation.

32 (3) An obligation secured in this manner shall not be deemed non-
 33 conforming on the grounds that, for the purpose of loading, unloading,
 34 storing, shipping, or transshipping, such title documents or the property
 35 covered thereby may be released under trust receipt to the possession of the
 36 obligor or borrower if, within twenty-one (21) days after such release, the

1 property or valid title documents covering the property is redelivered to the
2 state bank, and provided that, during such interim, the bank holds a perfected
3 security interest in all such property under the Uniform Commercial Code, § 4-
4 1-101 et seq.

5 (4) The standard twenty percent (20%) loan limit will apply even to the
6 obligations secured by transferable documents of title if the warehouseman who
7 issued the documents of title under applicable law can transfer marketable
8 title to the commodities described in the documents to a purchaser in the
9 ordinary course of business.

10

11 23-47-503. Loans involving stock of state bank.

12 (a) It shall be unlawful for any state bank to knowingly:

13 (1) Loan its funds to its stockholders on its own stock, or stock in its
14 bank holding company, as collateral security;

15 (2) Make any loan, the proceeds of which are used to purchase its own
16 stock or stock of its bank holding company; or

17 (3) Carry as an asset any loan representing, either directly or
18 indirectly, an investment in its own stock or that of its bank holding
19 company; provided, however, that there shall be no violation of this
20 subsection (3) where a bank acquires its own stock or stock in its bank
21 holding company in the regular course of collecting a debt previously
22 contracted in good faith if the bank complied with subsections (1) and (2)
23 hereof at the time the loan was made and if the bank divests the stock within
24 two (2) years.

25 (b) Any officer or director of any state bank or any stockholder
26 violating the provisions of this section shall be subject to civil money
27 penalties of one thousand dollars (\$1,000) per day, up to a maximum of one
28 hundred thousand dollars (\$100,000) in the aggregate, for each such violation.
29 The civil penalties may be imposed by the Commissioner pursuant to his power
30 to and the procedure for issuing cease and desist orders.

31

32 23-47-504. Loans to affiliates and insiders.

33 The provisions of subsections (g) and (h) of Section 22 of the Federal
34 Reserve Act, 12 U.S.C. §§ 375a and 375b, and the regulations promulgated
35 thereunder, shall apply to any state bank.

36

1 23-47-505. Illegal loans -- Liability of officer or director.

2 Any officer or director of any state bank who shall knowingly make or
3 approve a loan in violation of 23-47-501 through 23-47-504 or who shall
4 knowingly permit such a loan to be made, or who shall fail to exercise his
5 authority to prevent the making of such loan shall be personally liable to the
6 bank, or to the Commissioner, for the full amount thereof. However, written
7 notice of disapproval of the loan, served on the board of directors and also
8 the Commissioner at the time the making or existence of the loan first comes
9 to his knowledge, shall relieve any officer or director from personal
10 liability.

11

12 23-47-506. Sale of certain mortgage loans.

13 Notwithstanding any other provision of law, any state bank which has as
14 one (1) of its principal purposes the making or purchasing of loans secured by
15 real estate mortgages is authorized to:

16 (1) Sell such mortgage loans to the Federal National Mortgage
17 Association, the Federal Home Loan Mortgage Corporation, the Government
18 National Mortgage Association, or any other corporation chartered by an act of
19 Congress for such purposes, or any successor thereof;

20 (2) In connection therewith, make payments of any capital contributions
21 required pursuant to law in the nature of subscriptions for stock of the
22 entities described in subsection (1) of this section;

23 (3) Receive stock evidencing such capital contributions; and

24 (4) Hold or dispose of such stock.

25

26 23-47-507. Power to hold and sell collateral.

27 A state bank may hold and sell all kinds of property that may come into
28 its possession as collateral security for loans or any ordinary collection of
29 debts, in the manner provided by law. Any personal property coming into its
30 possession in this manner and which is not otherwise authorized for state
31 banks to own as an asset shall be disposed of as soon as possible and after
32 twelve (12) months from the date of acquisition shall cease to be considered
33 as a part of its assets.

34

35 23-47-508. Disposition of real estate acquired through debt collection.

36 (a) Except as provided in subsection (c) hereof, real estate acquired

1 through the collection of debts previously contracted in the ordinary course
2 of business shall not be held by the state bank as an asset for a longer
3 period than five (5) years.

4 (b) The amount of the charge-off shall be one-sixtieth (1/60) of the
5 acquisition cost of the real estate and shall be made monthly within thirty
6 (30) days after acquisition of the real estate. The Commissioner has the
7 authority to waive or extend the monthly charge-off of the real estate upon
8 written request of the state bank. The book value of the real estate
9 exclusive of the required charge-off shall be considered an asset of the bank.

10 (c) Upon good cause shown, the Commissioner may permit real estate
11 acquired through the collection of debts previously contracted in the ordinary
12 course of business to be held by the state bank and to be charged off at the
13 rate of one-two hundred fortieth (1/240) per month (five percent (5%) per
14 year) of the appropriate account maintained by the bank. The amount of
15 charge-off shall be made on a pro rata basis no less frequently than monthly
16 and shall begin within thirty (30) days after the acquisition of the real
17 estate. However, the entire balance must be charged off within ten (10) years
18 from the date of acquisition. The Commissioner shall review annually all
19 approvals granted under this section and may modify and extend approvals so
20 granted.

21

22 23-47-509. Loans to minors.

23 Whenever a minor borrows money from a bank for the purpose of defraying
24 the expenses of his higher education or for necessities, any contract,
25 promissory note, loan agreement, or other loan instrument entered into by and
26 between the bank and the minor shall constitute a valid contract between the
27 bank and the minor and shall be binding upon the minor with like effect as if
28 he were of full age and legal capacity.

29

30 23-47-510. Casualty insurance -- Replacement cost coverage.

31 (a) A state bank, when making a mortgage loan, may not require, as a
32 condition or term of the mortgage, that the mortgagor purchase casualty
33 insurance on property which is the subject of the mortgage in an amount in
34 excess of the fair market value of the buildings or appurtenances on the
35 mortgaged premises.

36 (b) This section shall not be construed as limiting the right of the

1 mortgagor to purchase replacement cost coverage on the property which is the
 2 subject of the mortgage.

3

4 Subchapter 6 - SUBSIDIARIES.

5

6 23-47-601. Operating subsidiaries.

7 (a) With the prior approval of the Commissioner, and subject to such
 8 conditions as may be prescribed by him, a state bank may engage in any
 9 activities which are a part of the business of banking or incidental thereto
 10 by means of an operating subsidiary.

11 (b) In order to qualify as an operating subsidiary, at least eighty
 12 percent (80%) of the voting stock of the subsidiary must be owned by the state
 13 bank.

14 (c) The total of a state bank's loans and investments in any single
 15 operating subsidiary shall not exceed twenty percent (20%) of the bank's
 16 capital base, and the total of a state bank's loans and investments in all
 17 subsidiaries, including operating subsidiaries and bank service companies,
 18 shall not exceed one hundred percent (100%) of the bank's capital base. Loans
 19 to an operating subsidiary that are fully secured by securities that the state
 20 bank could invest in without limitation pursuant to 23-47-401 shall not be
 21 subject to the limitations of this subsection or of 23-47-602.

22

23 23-47-602. Real estate subsidiaries.

24 (a) A state bank acting through an operating subsidiary and a bank
 25 holding company acting, directly or through a subsidiary, may engage in real
 26 estate investment and development, including without limitation:

27 (1) Development of subdivisions or additions;

28 (2) Construction of improvements;

29 (3) Acquisition of stock or equity interests in any entity created
 30 primarily for the purpose of owning and developing real estate, including
 31 those activities authorized for community development corporations pursuant to
 32 23-47-605; and

33 (4) Any other activities necessary and proper in connection with real
 34 estate investment and development.

35 (b) A state bank's investment in real estate and in real estate
 36 subsidiaries (excluding its bank premises) shall not exceed twenty percent

1 (20%) of its capital base.

2 (c) A state bank acting through an operating subsidiary or a bank
3 holding company acting directly or through a subsidiary may carry out any one
4 (1) or more of the purposes, activities, and objectives set forth in this
5 section as principal, factor, agent, or otherwise, either alone, through or in
6 conjunction with any person, including the performance and carrying out of the
7 purposes and objects herein enumerated as a member of a partnership or joint
8 venture.

9

10 23-47-603. Bank service companies.

11 (a) As used in this section, unless the context otherwise requires:

12 (1) Bank service company means a corporation or limited liability
13 company organized for the exclusive purpose of performing bank services for
14 one (1) or more persons, which is owned by one (1) or more state banks and one
15 (1) or more persons.

16 (2) Bank services means services such as check and deposit sorting and
17 posting, computation and posting of interest and other credits and charges;
18 preparation and mailing of checks, statements, notices, and similar items; any
19 other clerical, bookkeeping, accounting, statistical, or similar functions
20 performed for a person; or any other activities authorized by the
21 Commissioner.

22 (b) With the prior approval of the Commissioner and subject to such
23 conditions as may be prescribed by him, a state bank may establish, create, or
24 invest in a bank service company to furnish bank services to owners of the
25 bank service company and other persons. The total of a state bank's loans to
26 and investments in a bank service company shall not exceed twenty percent
27 (20%) of the bank's capital base.

28 (c) When a state bank becomes the sole owner of a bank service company,
29 it shall become an operating subsidiary of the bank and be governed by 23-47-
30 601.

31

32 23-47-604. Capital development corporations.

33 (a) State banks shall have the power to acquire and own on their own
34 behalf stock or equity interests issued by a capital development corporation,
35 or make loans to a capital development corporation. No state bank shall
36 invest in or lend to the capital development corporation more than twenty

1 percent (20%) of the bank's capital base.

2 (b) Any investment in stock or equity interest made pursuant to this
3 section shall not be revalued or classified by the Commissioner solely because
4 of the failure of a capital development corporation to pay dividends or
5 distributions of equity to the investors.

6

7 23-47-605. Community development corporations.

8 A state bank may make investments designed primarily to promote the
9 public welfare, either directly or by purchasing interests in an entity
10 primarily engaged in making such investments. As used herein, the term
11 public welfare shall mean developing housing, fostering economic growth and
12 revitalization, creating small businesses, including minority-owned
13 businesses, and supporting other community development initiatives approved by
14 the Commissioner. A state bank shall not make any such investment if the
15 investment would expose the bank to unlimited liability. The Commissioner may
16 limit a state bank's investments in any one (1) project and a bank's aggregate
17 investments under this section. In no case shall a state bank's aggregate
18 investments under this section exceed ten percent (10%) of the bank's capital
19 base.

20

21 23-47-606. Small business investment companies.

22 A state bank may purchase up to one hundred percent (100%) of the
23 capital stock of small business investment companies and minority enterprise
24 small business investment companies as defined by the Small Business Act of
25 1958, as amended. However, in no event may any state bank acquire shares of
26 any small business investment company or minority enterprise small business
27 investment company if, upon the making of that acquisition, the aggregate
28 amount of shares in small business investment companies or minority enterprise
29 small business investment companies then held by the bank would exceed ten
30 percent (10%) of the bank's capital base.

31

32 23-47-607. Investment in stock of certain banks authorized to do
33 foreign banking.

34 Any state bank may purchase up to one hundred percent (100%) of the
35 capital stock of any corporation organized and existing under the Edge Act,
36 and any amendments thereto. However, in no event may any state bank acquire

1 shares of any such corporation if, upon the making of that acquisition, the
2 aggregate amount of shares of all corporations organized and existing under
3 the Edge Act then held by the bank would exceed ten percent (10%) of the
4 bank's capital base.

5

6 Subchapter 7 - TRUST POWERS.

7

8 23-47-701. Authority of the Commissioner.

9 The Commissioner shall be authorized and empowered to grant to state
10 banks applying therefor the right to operate a trust department to act as
11 trustee, executor, administrator, custodian, registrar, paying agent or
12 transfer agent of stocks and bonds, guardian of estates, assignee, receiver,
13 or in any other fiduciary capacity in which national banks, subsidiary trust
14 companies, national trust companies or other corporations which come into
15 competition with state banks are permitted to act.

16

17 23-47-702. Considerations determinative of grant or denial of
18 applications.

19 In determining whether to grant an application by a state bank for
20 permission to operate a trust department to exercise the powers enumerated in
21 this part, the Commissioner may take into consideration the sufficiency of the
22 capital base of the applying state bank, the needs of the community to be
23 served, and any other facts and circumstances that seem to him proper, and may
24 grant or refuse the application accordingly.

25

26 23-47-703. Grant and exercise of powers deemed not in contravention of
27 Arkansas law.

28 The granting and exercise of such powers as are authorized by this
29 subchapter shall not be deemed to be in contravention of any other provision
30 of Arkansas law.

31

32 23-47-704. Segregation of fiduciary and general assets -- Separate
33 books and records.

34 State banks exercising any or all of the powers enumerated in this
35 subchapter shall segregate all assets held in its trust department from the
36 general assets of the bank and shall keep a separate set of books and records

1 showing in proper detail all transactions engaged in under authority of this
2 part.

3

4 23-47-705. Prohibited operations -- Separate investment account --
5 Collateral for certain funds used in conduct of business -- Lien and claim
6 upon state bank failure.

7 (a) No state bank shall receive in its trust department deposits of
8 current funds subject to check or the deposit of checks, drafts, bills of
9 exchange, or other items for collection or exchange purposes. Funds deposited
10 or held in trust by the state bank awaiting investment shall be carried in a
11 separate account and shall not be used by the bank in the conduct of its
12 business unless it shall secure the funds deposited or held in trust with
13 investments in which a state bank may invest without limitation pursuant to
14 23-47-401. No security shall be required to the extent the funds so deposited
15 or held in trust are insured under the provisions of the Federal Deposit
16 Insurance Act.

17 (b) In the event of the failure of such state bank the owners of the
18 funds held in trust for investment shall have a first priority lien on the
19 bonds or other securities so set apart in addition to their claim against the
20 estate of the bank.

21

22 23-47-706. Officials' oath or affidavit.

23 In any case in which Arkansas law requires that a corporation acting as
24 trustee, executor, administrator, or in any capacity specified in this part,
25 shall take an oath or make an affidavit, the president, a vice president or a
26 trust officer of a state bank may take the necessary oath or execute the
27 necessary affidavit.

28

29 23-47-707. Loans of trust funds to officers and employees prohibited --
30 Penalties.

31 It shall be unlawful for any state bank to lend to any officer,
32 director, or employee any funds held in trust under the powers conferred by
33 this part, or to sell assets held in trust to any such persons, without the
34 prior written approval of the Commissioner. In the absence of such prior
35 written approval of the Commissioner, any officer, director, or employee
36 making such loan or sale, or to whom such loan or sale is made is guilty of a

1 class D felony.

2

3 23-47-708. Surrender of authorization -- Board resolution --
4 Commissioner certification -- Activities affected.

5 (a) Any state bank desiring to surrender its right to operate a trust
6 department and to exercise the powers granted under this part, in order to
7 relieve itself of the necessity of complying with the requirements of this
8 part, or to have returned to it any securities which it may have deposited
9 with the state and local authorities for the protection of private or court
10 trusts, or for any other purpose, may file with the Commissioner a certified
11 copy of a resolution of its board of directors signifying such desire. Upon
12 receipt of such resolution, the Commissioner, after satisfying himself that
13 such bank has been relieved in accordance with Arkansas law of all duties as
14 trustee, executor, administrator, custodian, registrar, paying agent or
15 transfer agent of stocks or bonds, guardian of estates, assignee, receiver, or
16 other fiduciary, under court, private, or other appointments previously
17 accepted under authority of this subchapter may, in his discretion, issue to
18 such bank a certificate certifying that such bank is no longer authorized to
19 operate a trust department and exercise the powers granted by this part.

20 (b) Upon the issuance of a certificate by the Commissioner certifying
21 that a state bank is no longer authorized to operate a trust department, the
22 bank:

23 (1) Shall no longer operate a trust department or be subject to the
24 provisions of this subchapter or Department regulations made pursuant thereto;

25 (2) Shall be entitled to have returned to it any securities which it
26 may have deposited with state or local authorities for the protection of
27 private or court trusts; and

28 (3) Shall not operate a trust department or exercise thereafter any of
29 the powers granted by this subchapter without first applying for and obtaining
30 a new permit to operate a trust department to exercise such powers pursuant to
31 the provisions of this subchapter.

32

33 23-47-709. Revocation -- Procedures available.

34 (a) In addition to the authority conferred by any other law, if, in the
35 opinion of the Commissioner, a state bank is unlawfully or unsoundly operating
36 a trust department or exercising, or has unlawfully or unsoundly operated or

1 exercised, or has failed for a period of five (5) consecutive years to operate
2 a trust department or exercise the powers granted by this part, or otherwise
3 fails or has failed to comply with the requirements of this part, the
4 Commissioner may issue and serve upon the bank a notice of intent to revoke
5 the authority of the bank to operate its trust department and exercise the
6 powers granted by this part. The notice shall contain a statement of the
7 facts constituting the alleged unlawful or unsound operation or exercise of
8 powers, or failure to operate or exercise powers, or failure to comply, and
9 shall fix a time and place at which a hearing will be held to determine
10 whether an order revoking the authority to exercise such powers should issue
11 against the bank.

12 (b) Such hearing shall be conducted in accordance with the provisions of
13 the Administrative Procedures Act, § 25-15-201, et seq., and shall be fixed
14 for a date not earlier than thirty (30) days nor later than sixty (60) days
15 after service of such notice unless an earlier or later date is set by the
16 Commissioner at the request of any state bank so served.

17 (c) Unless the state bank so served shall appear at the hearing by an
18 authorized representative, it shall be deemed to have consented to the
19 issuance of the revocation order. In the event of such consent, or if upon
20 the record made at any such hearing, the Commissioner shall find that any
21 allegation specified in the notice of charges has been established, the
22 Commissioner may issue and serve upon the state bank an order prohibiting it
23 from accepting any new or additional trust accounts and revoking authority to
24 operate its trust department and exercise any and all powers granted by this
25 part, except that such order shall permit the bank to continue to service all
26 previously accepted trust accounts pending their expeditious divestiture or
27 termination.

28 (d) A revocation order shall become effective not earlier than the
29 expiration of thirty (30) days after service of such order upon the state bank
30 so served (except in the case of a revocation order issued upon consent, which
31 shall become effective at the time specified therein), and shall remain
32 effective and enforceable, except to such extent as it is stayed, modified,
33 terminated, or set aside by action of the Commissioner or a reviewing court.

34

35 23-47-710. Services provided by affiliates.

36 Any state bank, national bank, subsidiary trust company or national

1 trust company qualified to act as a fiduciary in this state, is hereby
2 specifically authorized to utilize its respective affiliates to provide
3 services for any trust or estate for which the bank, subsidiary trust company
4 or national trust company acts as a trustee or other fiduciary, provided the
5 bank, subsidiary trust company or national trust company believes, in the
6 exercise of the standard of care described in § 28-71-105, that the services
7 are reasonably necessary and that its affiliate can render such services,
8 including, but not limited to, securities brokerage services, computer
9 services, and banking services, to the trust or estate as competently as
10 similar services rendered by nonaffiliates and for compensation equal to or
11 less than that charged by nonaffiliates. Provided the foregoing requirements
12 are met, an affiliate may be utilized by the bank, subsidiary trust company or
13 national trust company without the approval or consent of any person or
14 specific authorization in the trust instrument, unless such power is expressly
15 withheld in the trust instrument.

16

17 Subchapter 8 -- SUBSIDIARY TRUST COMPANIES

18

19 23-47-801. Definitions.

20 For purposes of this part, affiliated bank means a bank, having its
21 main office in this state, more than fifty percent (50%) of the voting stock
22 of which is owned directly or indirectly by:

23 (1) The same bank holding company that owns, directly or indirectly,
24 more than fifty percent (50%) of the voting stock of a subsidiary trust
25 company or national trust company; or

26 (2) The same five (5) or fewer persons who are individuals, estates, or
27 trusts that own directly or indirectly more than fifty percent (50%) of the
28 voting stock of the bank holding company described in subdivision (1) of this
29 section, taking into account the stock ownership of each such person only to
30 the extent such ownership is identical with respect to each of the bank and
31 the bank holding company.

32

33 23-47-802. Creation, formation, etc. -- Powers -- Location.

34 (a) Notwithstanding the provisions of 23-48-405, bank holding companies
35 that own, directly or indirectly, an affiliated bank are authorized and
36 empowered by the provisions of this subchapter to apply to the Commissioner

1 for authority to:

2 (1) Create, form, and establish subsidiary trust companies under this
3 subchapter for the purpose of combining the trust operations of their
4 affiliated banks into a single trust operation; and

5 (2) Create, form, and establish national trust companies under the laws
6 of the United States.

7 (b) In determining whether to grant an application for permission to
8 establish a subsidiary trust company, the Commissioner shall take into
9 consideration the sufficiency of the capital base of the applying bank holding
10 company, the needs of the communities to be served, and any other facts and
11 circumstances that seem to him proper, and may grant or refuse the application
12 accordingly.

13 (c) The subsidiary trust company shall be formed as a business
14 corporation under the Arkansas Business Corporation Act, § 4-27-101, et seq.
15 The newly formed subsidiary trust company shall only have the ability to
16 conduct trust business that could be conducted by the individual trust
17 departments combined from the affiliated banks to create the subsidiary trust
18 company.

19 (d) Offices of a subsidiary trust company may be located only in:

20 (1) Communities where its affiliated banks are located or in communities
21 where their branches are or could be located; or

22 (2) Communities where it would be authorized to have an office if it
23 were a national trust company.

24 (e) A subsidiary trust company shall be fully subject to the provisions
25 of Chapter 50 of this title.

26

27 23-47-803. Substitution of subsidiary trust company or national trust
28 company for affiliated bank.

29 (a) A subsidiary trust company or national trust company and one (1) or
30 more of its affiliated banks may enter into one (1) or more agreements under
31 which the subsidiary trust company or national trust company is substituted as
32 fiduciary for each affiliated bank in each fiduciary account listed in the
33 agreement. The agreement shall be filed with the Commissioner before the
34 effective date of the substitution and must include:

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

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

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

6 (1) Each person who is readily ascertainable as a beneficiary of the
 7 account because of the receipt of statements of account by the person, or in
 8 the case of a minor beneficiary, by a parent, conservator, or guardian of the
 9 minor beneficiary;

10 (2) Each cofiduciary;

11 (3) Each surviving settlor of a trust;

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

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

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

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

17 (c) The notice must be sent by United States mail to the person's
 18 current address as shown on the fiduciary records. If the fiduciary has no
 19 address for the person on its records, the fiduciary shall make a reasonable
 20 attempt to ascertain the person's current address. The notice must disclose
 21 the person's rights with respect to objecting to the transfer of the fiduciary
 22 account and the liability of the existing fiduciary and the substitute
 23 fiduciary for their actions. Intentional failure to send the required notice
 24 renders the substitution of fiduciary ineffective, but an unintentional
 25 failure to send the required notice does not impair the validity or effect of
 26 substitution. If a substitution of a subsidiary trust company is ineffective
 27 because of a defect in the required notice, the actions taken by the
 28 subsidiary trust company before the determination of the invalidity of the
 29 substitution are valid if the actions would have been valid if performed by
 30 the affiliated bank.

31 (d) Except as provided by this subsection, the prospective designation
 32 in a will or other instrument of the affiliated bank as fiduciary is
 33 considered designation of the subsidiary trust company or national trust
 34 company, and any grant in the will or other instrument of any discretionary
 35 power is considered conferred on the subsidiary trust company or national
 36 trust company. However, the affiliated bank and subsidiary trust company or

1 national trust company may agree in writing to have the designation of the
2 affiliated bank as fiduciary be binding, or the creator of the fiduciary
3 account may, by appropriate language in the document creating the fiduciary
4 account, provide that the fiduciary account is not eligible for substitution
5 under this part.

6 (e) Substitution under this section is effective for all purposes on the
7 effective date stated in the agreement between the subsidiary trust company or
8 national trust company and the affiliated bank, unless, not later than fifteen
9 (15) days before the effective date, a party entitled to notice of the
10 substitution under subsection (b) of this section files a written petition in
11 a court of competent jurisdiction seeking to have the substitution denied
12 under 23-47-804 and provides the affiliated bank with a copy of the filed
13 petition.

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

17 (g) On the effective date, the subsidiary trust company or national
18 trust company succeeds to all right, title, and interest in all property that
19 the affiliated bank holds as fiduciary, except property held for accounts for
20 which there has been no substitution under this part, without the necessity of
21 any instrument of transfer or conveyance, and the subsidiary trust company or
22 national trust company shall, without the necessity of any judicial action or
23 action by the creator of the fiduciary account, become fiduciary and perform
24 all the duties and obligations and exercise all the powers and authority
25 connected with or incidental to that fiduciary capacity in the same manner as
26 if the subsidiary trust company or national trust company had been originally
27 named or designated fiduciary. However, the affiliated bank is responsible
28 and liable for all actions taken by it while it acted as fiduciary.

29

30 23-47-804. Removal of accounts from operation of substitution agreement
31 -- Denial of substitution.

32 (a) A fiduciary account may be removed from the operation of the
33 agreement by an amendment to the agreement filed with the Commissioner before
34 the effective date stated in the agreement.

35 (b) The substitution of a subsidiary trust company or national trust
36 company as fiduciary of an account may be denied if the court having

1 jurisdiction, on notice and hearing, determines that the substitution of
2 fiduciary is a material detriment to the account or to the beneficiaries of
3 the account.

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

7 (d) In any proceeding under this section, the court may award costs and
8 reasonable and necessary attorneys's fees as the court considers equitable and
9 just.

10

11 23-47-805. Deposits.

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

15 (b) A subsidiary trust company or national trust company may deposit
16 with an affiliated bank fiduciary funds as a permanent investment if
17 authorized by the settlor in the instrument creating the trust or if
18 authorized in a writing delivered to the trustee by a beneficiary currently
19 eligible to receive distributions from a trust.

20

21 23-47-806. Responsibility for acts and omissions.

22 (a) The bank holding company owning a subsidiary trust company or
23 national trust company shall file with the Commissioner an irrevocable
24 undertaking to be fully responsible for the existing and future fiduciary acts
25 and omissions of its subsidiary trust company or national trust company.

26 (b) If an affiliated bank has given bond to secure performance of its
27 duties and the subsidiary trust company or national trust company qualifies as
28 successor fiduciary, the subsidiary trust company or national trust company
29 shall give bond to secure performance of its duties in the same manner.

30

31 23-47-807. Qualification as successor fiduciary.

32 For the purposes of qualification as successor fiduciary under any
33 requirements contained in any document creating a fiduciary account or any
34 statute of this state relating to fiduciary accounts, the subsidiary trust
35 company or national trust company:

36 (1) Is considered to have capital and surplus equal to its capital and

1 surplus plus the capital and surplus of its owning bank holding company; and

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

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

5 (B) It has not entered into a substitution agreement with an affiliated
6 bank that is a national bank under federal law relating to national banks.

7

8 Subchapter 9 - SAFE DEPOSIT FACILITIES.

9

10 23-47-901. Safe deposit facilities -- Liability of lessor.

11 A state bank may lease safe deposit boxes for the keeping of property on
12 such terms as may be agreed by the parties. No state bank or national bank
13 shall be liable for any loss of the property in a safe-deposit box by theft,
14 robbery, fire or other cause.

15

16 23-47-902. Multiple-party leases.

17 (a) If a safe deposit box is held in the name of two (2) or more
18 persons, any one (1) of such persons shall be entitled to access the safe-
19 deposit box and shall be permitted to remove the contents thereof, and the
20 bank shall not be responsible for any damage arising by reason of such access
21 or removal by one (1) of said persons.

22 (b) The death of one (1) holder of a safe deposit box held in the name
23 of two (2) or more persons does not affect the right of any other holder of
24 the safe deposit box to have access to and remove contents from the safe
25 deposit box.

26

27 23-47-903. Lease to a minor.

28 A bank may lease a safe deposit box to a minor, and, in connection
29 therewith, deal with him to the same effect as if leasing to and dealing with
30 a person of full legal capacity.

31

32 23-47-904. Limiting right of access for failure to comply with security
33 procedures.

34 If any lessee is unwilling or unable to comply with any of the bank's
35 normal requirements or procedures in connection with access to a safe deposit
36 box relating to security, safety, or protection, the bank has the right to

1 limit or deny access to the safe deposit box by that lessee unless all lessees
 2 of such safe deposit box take such action as is necessary to ensure reasonable
 3 compliance with such security, safety, or protection requirements or
 4 procedures.

5

6 23-47-905. Adverse claims to contents of safe deposit box.

7 Notice to a bank of an adverse claim to the contents of a safe deposit
 8 box shall not be sufficient to require the bank to deny access to its lessee
 9 unless the adverse claimant also procures a restraining order, injunction, or
 10 other process, which has become final and not further appealable, issued in an
 11 action by a court of competent jurisdiction in which the lessee is served with
 12 process and named as a party.

13

14 23-47-906. Remedies and procedures for nonpayment of rent.

15 (a) If the safe deposit box rental is delinquent for six (6) months, the
 16 bank, after at least thirty (30) days' notice by certified mail, return
 17 receipt requested, addressed to the lessee at the lessee's last known address
 18 on the books of the bank, may, if the rent is not paid within the time
 19 specified in said notice, open the safe deposit box in the presence of a
 20 notary public and two (2) employees, at least one (1) of whom is an officer of
 21 the bank.

22 (b) The bank shall inventory the contents of the safe deposit box in
 23 detail and place the contents of the safe deposit box in a sealed envelope or
 24 container bearing the name of the lessee.

25 (c) The bank shall hold the contents of the safe deposit box subject to
 26 a lien for its rental, the cost of opening the safe deposit box, and the
 27 damages in connection therewith. If such rental, cost, damages, and any other
 28 lawful charges for the use of the safe deposit box or the holding of the
 29 contents thereof are not paid within two (2) years from the date of opening of
 30 the safe deposit box, the bank may sell at that time (or at any time prior to
 31 seven (7) years from the date the safe deposit box lease expired) any part or
 32 all of the contents at public auction in like manner and upon like notice as
 33 is prescribed for the sale of real property under mortgage or deed of trust.
 34 Any unauctioned contents of safe deposit boxes and any excess proceeds from
 35 such sale shall be remitted to the Auditor of State under the procedures
 36 prescribed by § 18-28-201 et seq.

1

2

Chapter 48

3

ORGANIZATION AND OPERATION

4

Subchapter 1 - GENERAL PROVISIONS

5

6 23-48-101. Banks subject to gross receipts and compensating use taxes.

7 All banks shall be subject to the Arkansas Gross Receipts Act, § 26-52-
8 101 et seq., and the Arkansas Compensating Tax Act, § 26-53-101 et seq.

9

10 23-48-102. Trust companies no longer subject to banking laws.

11 All trust companies, other than national trust companies and subsidiary
12 trust companies, in existence on May 30, 1997, must cease operations as a
13 trust company. Trust companies, other than subsidiary trust companies and
14 national trust companies, which have not become banks by the effective date of
15 this act by complying with the provisions of law for the formation of a bank,
16 shall no longer act as or be authorized to act as a fiduciary, nor shall they
17 be subject to laws governing banks or trust companies, or exercise or be
18 authorized to exercise any powers granted banks or trust companies by such
19 laws, but instead will automatically become business corporations and be
20 subject to the Arkansas Business Corporation Act of 1987, § 4-27-101, et seq.,
21 and the Commissioner shall deliver certified copies of the articles of
22 incorporation, all amendments thereto, and all other corporate filings of
23 those trust companies to the Secretary of State for inclusion in his official
24 records of filings of business corporations.

25

26 23-48-103. Bank holidays.

27 (a)(1) Any bank, subsidiary trust company or national trust company
28 doing business in this state may close its office for the transaction of
29 business upon any day which has been or may hereafter be set apart or
30 designated under the laws of this state or of the United States as a legal
31 holiday.

32 (2) All acts omitted or done by any bank, subsidiary trust company or
33 national trust company upon any such day shall have the same consequence and
34 effect as if omitted or done upon the next succeeding business day.

35 (b)(1) Any bank, subsidiary trust company or national trust company
36 transacting business in the State of Arkansas may close on any one (1)

1 business day of each week.

2 (2) Any day upon which a bank, subsidiary trust company or national
3 trust company may elect to close shall, with respect to such institution, be
4 deemed a holiday for all purposes and not a business day.

5 (3) All acts omitted or done by a bank, subsidiary trust company or
6 national trust company upon any such day shall have the same consequence and
7 effect as if omitted or done upon the next succeeding business day.

8 (c) Any act authorized, required, or permitted to be performed at or
9 with respect to any such bank, subsidiary trust company or national trust
10 company on the days closed may be performed on the next succeeding business
11 day, and no liability or loss of rights of any kind shall result from such
12 delay.

13

14 23-48-104. Dealings with agents, fiduciaries, etc.

15 A bank dealing, whether to its own benefit or otherwise, with, through,
16 or under any person who is or may be an officer, employee, member, agent,
17 trustee, representative or other fiduciary of another person, shall not be
18 deemed to have notice of nor be obligated to inquire as to any lack of or
19 limitation upon the power of such person solely by reason either of:

20 (1) The fact that the person has executed in his representative capacity
21 and is himself the payee or endorsee of any check, bill, note, or other
22 promise or order; or

23 (2) The use of descriptive words in connection with his deposit account
24 or accounts, any transfer, certificate, or memorandum thereof, or in
25 connection with any signature or endorsement of the person.

26

27 23-48-105. Agents for affiliate.

28 (a)(1) As used in this section, institution means a bank, savings and
29 loan association, or savings bank organized under the laws of any state or the
30 United States.

31 (2) For the purpose of determining what constitutes an affiliated
32 institution in this section, control, as it pertains to the definition of
33 affiliate, has the meaning set forth in § 2(a)(2) of the federal Bank
34 Holding Company Act of 1956, as amended, 12 U.S.C. § 1841.

35 (b) Any state bank may, upon compliance with the requirements of this
36 section, agree to receive deposits, renew time deposits, close loans, service

1 loans, receive payments on loans and other obligations, perform such other
2 services as may receive the prior approval of the Commissioner, and act as an
3 agent for any affiliated institution.

4 (c) A state bank that proposes to enter into an agency agreement under
5 this section shall, prior to entering into such agreement, file with the
6 Commissioner:

7 (1) A notice of intention to enter into an agency agreement with an
8 affiliated institution;

9 (2) A description of the services proposed to be performed under the
10 agency agreement; and

11 (3) A copy of the agency agreement.

12 (d)(1) If any proposed service is not specifically designated in
13 subsection (b) of this section, and has not previously been approved in a
14 Department regulation, the Commissioner shall decide whether to approve the
15 offering of such service after receipt of the notice required in subsection
16 (c) of this section.

17 (2) In deciding whether to approve any proposed service that is not
18 specifically designated in subsection (b) of this section, the Commissioner
19 shall consider whether such service would be consistent with applicable
20 federal and state law and the safety and soundness of the principal and agent
21 institutions.

22 (e) A state bank may not under an agency agreement:

23 (1) Conduct any activity as an agent that it would be prohibited from
24 conducting as a principal under applicable state or federal law; or

25 (2) Have an agent conduct any activity that the state bank, as
26 principal, would be prohibited from conducting under applicable state or
27 federal law.

28 (f) The Commissioner may order a state bank or any other institution
29 subject to the Commissioner's enforcement powers to cease acting as an agent
30 or principal under any agency agreement that the Commissioner finds to be
31 inconsistent with safe and sound banking practices.

32 (g) Notwithstanding any other provision of the law of this state, a
33 state bank acting as an agent for an affiliated institution in accordance with
34 this section shall not be considered to be a branch of that institution.

35

36 23-48-106. Exemption from posting bond in certain transactions.

1 (a) Except when the dollar amount of responsibility assumed exceeds its
 2 capital base, no bank, chartered or licensed to do business in this state,
 3 shall be required to furnish fidelity, surety, or performance bond, in
 4 business transactions involving:

- 5 (1) Garnishment;
- 6 (2) Replevin;
- 7 (3) Foreclosure;
- 8 (4) Forcible entry and detainer.

9 (b) At the beginning of any proceeding in all such business
 10 transactions, the bank shall, upon request, furnish to each party to the
 11 transaction a copy of its most recent statement of financial condition.

12 (c) Nothing in this section shall be construed to:

13 (1) Prevent a bank from electing or agreeing to furnish bond at its own
 14 cost;

15 (2) Prevent any other party of interest, desiring protection in a
 16 business transaction with a bank, from electing to secure and pay for a bond
 17 covering the bank to the benefit of such a party to the transaction;

18 (3) Amend or repeal any law pertaining to:

19 (A) Corporate surety or indemnity bonds covering directors, officers, or
 20 employees of such bank;

21 (B) Foreign corporations, associations, or persons not authorized to do
 22 business in this state;

23 (C) Actions available against such bank for injury or damage;

24 (D) Bonding requirements involving fiduciary activities.

25

26 Subchapter 2 -- RESERVES AND DIVIDENDS

27

28 23-48-201. Membership in Federal Reserve System.

29 Any state bank shall have the right to own such amount of stock in a
 30 federal reserve bank as may be required for it to become a member of the
 31 Federal Reserve System .

32

33 23-48-202. Reserve requirements.

34 A state bank not a member of the Federal Reserve System shall maintain
 35 at all times a reserve fund as required by the Federal Reserve Board, unless
 36 otherwise provided by Department regulations.

1

2 23-48-203. Payment of dividends.

3 Any state bank may, from time to time, declare and pay dividends in
4 accordance with Department regulations.

5

6 Subchapter 3 - ORGANIZATION AND MANAGEMENT GENERALLY

7

8 23-48-301. Application for incorporation.

9 (a) Any one (1) or more natural persons, eighteen years old or older, a
10 majority of whom shall be bona fide residents of this state, who may desire to
11 associate themselves by articles of incorporation for the purpose of
12 establishing any state bank, may apply to the Commissioner to be incorporated.
13 An application for authority to organize a state bank shall be submitted to
14 the Commissioner in such form as the Commissioner may prescribe and shall
15 include the information set forth in subsections (b) and (c) hereof, and
16 contain such additional information which the Commissioner may require. Five
17 (5) copies of the proposed articles of incorporation and proposed bylaws shall
18 be filed with the application. The application and articles of incorporation
19 shall be signed by each of the incorporators, and shall be accompanied by a
20 filing fee of not more than fifteen thousand dollars (\$15,000) as set by
21 Department regulations, which shall not be refundable.

22 (1) The name, citizenship, residence, and occupation of each
23 incorporator, and of each of the initial directors, and the name and address
24 of each stock subscriber, and the amount of stock paid for by each;

25 (2) The name and address of an individual within the state to whom
26 notice to all incorporators may be sent;

27 (3) The total initial capital and the number of shares of each class of
28 the capital stock to be authorized;

29 (4) The corporate name;

30 (5) The proposed location of the main banking office;

31 (6) If known, the name and residence of the proposed president, chief
32 executive officer, operations officer, and, if applicable, the name and
33 address of the proposed trust officer;

34 (7) The names of the natural persons who propose to own or control more
35 than five percent (5%) of the capital stock;

36 (8) The past and present connection with any depository institution,

1 financial institution or national trust company, other than as a customer on
 2 terms generally available to the public, of each proposed director and each
 3 subscriber to more than five percent (5%) of the capital stock;

4 (9) Evidence of the character, financial responsibility, and ability of
 5 the incorporators and proposed directors;

6 (10) A brief statement of the purposes for which the state bank is
 7 incorporated, and whether it shall operate a trust department;

8 (11) The term for which the state bank is to exist, which shall be
 9 perpetual unless otherwise limited;

10 (12) A statement signed and verified by the incorporators that the
 11 capital stock has been fully subscribed and the purchase price therefor has
 12 been paid into an escrow account approved by the Commissioner and that the
 13 requirements of 23-48-310 have been met;

14 (13) Proof that application for federal deposit insurance has been
 15 made; and

16 (14) Recitation of the need for and advisability of the approval to
 17 organize.

18 (c) The proposed articles of incorporation shall contain the following:

19 (1) The name of the proposed institution;

20 (2) The town or city in which the proposed institution is to be
 21 located;

22 (3) The amount of capital stock authorized, the number of shares of
 23 each class, the relative preferences, powers and rights of each class, and the
 24 amount of paid-in surplus;

25 (4) The names and places of residence of the stockholders and the
 26 number of shares held by each;

27 (5) A statement whether voting for directors shall or shall not be
 28 cumulative and the extent, if any, of the preemptive rights of stockholders;

29 (6) The term of the proposed institution's existence, which shall be
 30 perpetual unless otherwise limited;

31 (7) The names of the initial board of directors composed of not less
 32 than three natural persons who shall serve until the next annual meeting or
 33 until their successors are regularly elected and qualified;

34 (8) Such other information as the Department may require; and

35 (9) Such other proper provisions as the incorporators may choose to
 36 insert for the regulation of the internal affairs and business of the state

1 bank.

2 (d) All persons purporting to act as or on behalf of a state bank,
 3 knowing there was no incorporation under this chapter are jointly and
 4 severally liable for all liabilities created while so acting.

5

6 23-48-302. Organizational expenses.

7 (a) Organizational expenses shall not be paid from capital or surplus
 8 funds of the state bank without the prior written consent of the Commissioner.

9 (b)(1) Prior to applying for a charter, the incorporators shall
 10 establish an organizational expense fund in an amount the Commissioner deems
 11 adequate.

12 (2) Such fund shall be used for expenses incurred by the incorporators
 13 in connection with the organization of the proposed state bank.

14

15 23-48-303. Promoter's fees prohibited.

16 (a) A state bank shall not pay any fee, compensation, or commission for
 17 promotion in connection with its organization or apply any money received on
 18 account of shares or subscriptions, selling shares, or other services in
 19 connection with its organization or for securing subscriptions for stock,
 20 except legal fees and other usual and ordinary expenses necessary for its
 21 organization.

22 (b) A majority of incorporators shall file with the Department, at the
 23 time of filing of the articles, an affidavit:

24 (1) Setting forth all expenses incurred or to be incurred in connection
 25 with the organization of the state bank, subscription for its shares, and sale
 26 of its shares; and

27 (2) Stating that no fee, compensation, or commission prohibited by this
 28 section has been paid or incurred.

29 (c) In the event of a violation of this section, the Commissioner may
 30 disapprove the articles on account of such violation.

31

32 23-48-304. Investigation of new charter applications by Commissioner.

33 As soon as practicable after acceptance of any application for a new
 34 state bank charter and receipt of the filing fee, the Commissioner shall
 35 ascertain, from the best sources of information at his command, the character
 36 and general fitness of the persons named as stockholders of more than five

1 percent (5%) of the issued stock and their standing in the community in which
2 the proposed institution is to be located. The investigation shall seek to
3 determine the probable support for the new state bank and the adequacy of
4 existing facilities and services in the community. The investigation shall
5 address the proposed institution's earnings and deposits prospects, the
6 ability and character of its proposed management, the adequacy of initial
7 capital, the safety and soundness of intended operations, the economic
8 conditions in the market to be served, the convenience and needs of the
9 community to be served, and whether or not its proposed corporate powers are
10 consistent with applicable banking law. The Commissioner shall also determine
11 to his satisfaction that:

12 (1) The persons named as stockholders of more than five percent (5%) of
13 the issued stock, incorporators, and directors have the confidence of the
14 community and are able, financially and otherwise, to discharge the
15 obligations resting upon them under any of the provisions of this act;

16 (2) The requisite capital has been fully subscribed and the purchase
17 price therefor has been paid into an escrow account approved by the
18 Commissioner and that the requirements of 23-48-310 have been met;

19 (3) A majority of the stockholders are residents of this state; and

20 (4) There exists an economic need for the business in the community.

21

22 23-48-305. Issuance and filing of certificate of incorporation.

23 (a) The Commissioner shall, upon approval of the Banking Board and
24 payment of the fees, give to the persons named as incorporators a certificate
25 of incorporation, in such form as he may prescribe, if the Commissioner has
26 made satisfactory determinations as to the matters described in subsections
27 (1) through (4) of 23-48-304 and is also satisfied that appropriate federal
28 deposit insurance has been obtained.

29 (b) The Commissioner shall also return one (1) of the copies submitted
30 to him of the articles of incorporation upon which he has endorsed the fact of
31 the issuance by him of the certificate of incorporation.

32 (c) Upon receipt of the certificate of incorporation, the institution
33 may proceed with its business, but with only one (1) office for the
34 transaction of business in only the one (1) town or city as to which the
35 application has been made.

36

1 23-48-306. Relocation of place of business -- Amendment of articles.

2 (a)(1) Any state bank may apply for authority to change its place of
3 business from one (1) municipality to another by filing with the Commissioner,
4 as an amendment to its articles of incorporation, two (2) copies of a
5 resolution to that effect, and such additional information which the
6 Commissioner may require.

7 (2) The resolution must be adopted upon the affirmative vote of the
8 holders of at least a simple majority of the outstanding shares entitled to
9 vote thereon, at any annual or special meeting of the stockholders.

10 (3) Both copies of the resolution shall be signed by the president or a
11 vice president.

12 (4) One (1) of the copies of the resolution shall be retained by the
13 Commissioner; the other copy, if the Commissioner and Banking Board approve
14 the amendment, shall be returned with the Commissioner's endorsement of
15 approval thereof.

16 (b) The amendment shall become effective when it has been approved by
17 the Commissioner and the Banking Board.

18 (c) Each application for authority to change a state bank's place of
19 business shall be accompanied by a fee as shall be set by Department
20 regulation, which fee shall be paid to the Department.

21

22 23-48-307. Objects and method of charter amendment.

23 (a) Any state bank, through amendment to its articles of incorporation,
24 may from time to time do the following, which shall be in addition to all
25 things it may otherwise do through amendment under this act:

26 (1) Change its corporate name;

27 (2) Change, enlarge, or diminish its corporate purposes, in accordance
28 with the applicable state law;

29 (3) Increase or decrease its authorized capital stock, subject to the
30 limitations and in the manner set out in 23-48-311;

31 (4) Effect splits of its shares or a distribution of some portion of its
32 assets, other than cash or its own stock;

33 (5) Effect any fundamental change in its corporate affairs which may be
34 accomplished by charter amendment under any other statute of Arkansas.

35 (b) Articles of incorporation of a state bank may be amended at any
36 annual or special meeting of the stockholders.

1 (c) An amendment to the articles of incorporation may be adopted on the
 2 affirmative vote of the owners of a simple majority of each class of stock
 3 entitled to vote on the proposed amendment.

4

5 23-48-308. Filing of amendments to articles of incorporation.

6 (a) An application for approval of a proposed charter amendment
 7 described in 23-48-307 shall be submitted to the Commissioner in such manner
 8 and form as the Commissioner may prescribe and shall include the information
 9 set forth in subsection (b) hereof, and contain such additional information
 10 which the Commissioner may require. The application shall include duplicate
 11 copies of each proposed charter amendment, in the form of an amendment to the
 12 articles of incorporation, each copy to be certified by the president or a
 13 vice president.

14 (b) Each duplicate shall have annexed thereto, over the official
 15 signatures, a certificate showing:

- 16 (1) The date on which the amendment was authorized by the stockholders;
- 17 (2) The number of shares of each class entitled to vote on the amendment
 18 which were outstanding on the date of the stockholders' meeting;
- 19 (3) The number of shares of each class entitled to vote on the amendment
 20 whose owners were present in person or by proxy;
- 21 (4) The number of shares of each class voted for and against the
 22 amendment;
- 23 (5) The manner in which the meeting was called and the time and manner
 24 of giving notice, with a certification that the meeting was lawfully called
 25 and held.

26 (c) The Commissioner may also require the delivery to him of such
 27 additional copies of the proposed amendment as he may desire in order to
 28 present the matter to the Banking Board and any parties opposing the
 29 amendment.

30 (d) One (1) of the duplicate copies of any charter amendment filed with
 31 the Commissioner and certified as prescribed in this section, bearing an
 32 endorsement of the Commissioner showing that the amendment has been approved
 33 by him and by the Banking Board shall be returned to the applicant state bank.
 34 The amendment shall become effective when it has been approved by the
 35 Commissioner and the Banking Board.

36 (e) Each application for approval of a proposed charter amendment

1 described in 23-48-307 shall be accompanied by a fee of not less than one
 2 hundred dollars (\$100) nor more than five hundred dollars (\$500). Such fee
 3 shall be set by Department regulation and shall be paid to the Department.

4

5 23-48-309. Names of state banks and subsidiary trust companies.

6 (a) A person, may reserve the exclusive use of a corporate name by
 7 delivering an application to the Commissioner for filing. The application
 8 must set forth the name and address of the applicant and the name proposed to
 9 be reserved. If the Commissioner finds that the corporate name applied for is
 10 available, he shall reserve the name for the applicant's exclusive use for a
 11 nonrenewable two hundred and seventy (270) day period.

12 (b) The owner of a reserved corporate name may transfer the reservation
 13 to another person by delivering to the Commissioner a signed notice of
 14 transfer that states the name and address of the transferee.

15 (c) No state bank or subsidiary trust company shall conduct any
 16 business in this state under a fictitious name unless it first files with the
 17 Commissioner a form supplied or approved by the Commissioner giving the
 18 following information:

19 (1) The fictitious name under which business is being or will be
 20 conducted by the applicant corporation;

21 (2) A brief statement of the character of business to be conducted
 22 under the fictitious name;

23 (3) The corporate name, state of incorporation, and location (giving
 24 city and street address) of the registered office in the state of the
 25 applicant corporation.

26 (d) Each such form shall be executed in duplicate and filed with the
 27 Commissioner, who shall maintain an index of such filings. The Commissioner
 28 shall retain one (1) counterpart; and the other counterpart, bearing the file
 29 marks of the Commissioner, shall be returned to the state bank or subsidiary
 30 trust company. However, the Commissioner shall not accept such a filing if
 31 the proposed fictitious name is the same as, or confusingly similar to, the
 32 name of any domestic corporation, or any foreign corporation authorized to do
 33 business in this state, or any name reserved under this section.

34 (e) Copies of such filed forms, certified by the Commissioner, shall be
 35 admitted in evidence where the question of filing may be material.

36 (f) If, after filing hereunder, the applicant state bank or subsidiary

1 trust company is dissolved, or (being a foreign corporation) surrenders or
 2 forfeits its rights to do business in Arkansas or (whether a foreign or
 3 domestic corporation) ceases to do business in Arkansas under the specified
 4 fictitious name, such bank or subsidiary trust company shall be obligated to
 5 file with the Commissioner a cancellation of its privilege under this section.
 6 If such cancellation is not filed, the Commissioner, upon satisfactory
 7 evidence, may cancel such privilege, in which event such cancellation shall be
 8 certified by the Commissioner, who will file the same without fee.

9 (g) If a state bank or subsidiary trust company which has not filed
 10 hereunder has heretofore or shall hereafter become a party to any contract,
 11 deed, conveyance, assignment, or instrument of encumbrance in which such bank
 12 or subsidiary trust company is referred to exclusively by a fictitious name,
 13 the obligations imposed upon such bank or subsidiary trust company under said
 14 instrument and the right sought to be conferred on third parties thereunder
 15 may be enforced against it; but the rights accruing to such bank or subsidiary
 16 trust company under said instrument may not be enforced by the bank or
 17 subsidiary trust company in the courts of this state until it has complied
 18 with this section and pays to the Commissioner a civil penalty of three
 19 hundred dollars (\$300).

20

21 23-48-310. Minimum capital requirements generally.

22 (a) For all state banks chartered after May 30, 1997, the fully paid-up
 23 capital shall not be less than one million dollars (\$1,000,000). For all
 24 state banks, regardless of the date of their charter, the following capital
 25 requirements shall apply:

26 (1) The minimum capital base shall be determined by the Commissioner;

27 (2) The capital requirements for any state bank must also satisfy the
 28 requirements for deposit insurance of the Federal Deposit Insurance
 29 Corporation or its successor.

30 (b)(1) The Commissioner may increase the minimum capital requirement of
 31 any state bank, regardless of the date of its charter when, in the
 32 Commissioner's judgment, conditions within the state bank or the state bank's
 33 service area warrant such an increase.

34 (2) In the event the Commissioner orders an increase in a state bank's
 35 capital requirement, the state bank shall have at least thirty (30) days from
 36 the date of the order to comply with the order, or such longer period as the

1 Commissioner may allow;

2 (3) In the event a state bank disagrees with the Commissioner's
3 judgment in ordering an increase in its minimum capital requirement, it may
4 appeal the Commissioner's decision to the Banking Board. Such an appeal may
5 be had by following the procedures specified by the Banking Board.

6 (c) Shares of a newly chartered state bank may be issued only for cash
7 in an amount sufficient to meet the capitalization requirements set by the
8 Commissioner which shall be at least the aggregate par value of the shares
9 plus such amounts, if any, necessary to assure that after issuance of the
10 shares the bank will have the minimum capital base required by the
11 Commissioner under this section, and the expense fund required by 23-48-302.

12

13 23-48-311. Increase or decrease of capital stock.

14 (a) The authorized capital stock of any state bank may be increased or
15 decreased by amendment to its articles of incorporation, subject to the
16 requirements pertaining to such amendments contained in 23-48-307 and 308.

17 (b) A capital stock increase may be effected by the issuance and sale of
18 additional shares, which additional shares may be of the same class as the
19 shares then outstanding or may be represented by a different class or classes
20 having privileges, preferences, and voting rights greater or less than those
21 appurtenant to the then outstanding shares, whether common stock or preferred
22 stock.

23 (c) Stock dividends may be paid out of surplus or undivided profits.

24 (d) A state bank may authorize common stock, which may be retained,
25 unissued by the institution, until such time as the board of directors shall
26 order its sale or distribution.

27 (e) No decrease of the capital stock shall be permitted without the
28 consent of the Commissioner and in no event shall the capital be reduced to a
29 figure below the minimum prescribed by law.

30

31 23-48-312. Liability of shareholders -- Assessment of stock.

32 (a) Except as otherwise provided in this section, a purchaser from a
33 state bank of its own shares is not liable to the state bank or its creditors
34 with respect to the shares except to pay the full consideration, fixed as
35 provided by law, for which the shares were issued or were to be issued.

36 Except as otherwise provided in this section, or unless otherwise provided in

1 the articles of incorporation, a shareholder of a state bank is not personally
2 liable for the acts or debts of the state bank except that he may become
3 personally liable by reason of his own acts or conduct.

4 (b) When, in the opinion of the Commissioner, the report of an
5 examination of a state bank discloses bad or worthless assets which should be
6 charged off, he shall immediately instruct the officers of the state bank to
7 collect and realize upon such assets within a time fixed by him, and, if not
8 collected or realized upon within that time, the assets shall immediately be
9 charged off. If the capital, as defined by the Commissioner, is thereby
10 impaired, the Commissioner shall order the directors to make an assessment
11 upon the capital stock in form and manner as provided in subsection (c) of
12 this section to restore capital.

13 (c)(1) The directors of every state bank shall have power and authority
14 to levy and collect assessments on the stock of the state bank and shall make
15 such levy on the order of the Commissioner for the purpose of restoring any
16 deficiency that may occur by reason of the impairment of the capital of the
17 state bank.

18 (2) Should the assessment not be paid within thirty (30) days from the
19 date the assessment is made, the assessed stock, or so much thereof as may be
20 necessary, shall be sold at public auction to provide funds to meet the
21 assessment.

22 (3) A lien is created in favor of the state bank on the stock to pay the
23 assessments so made.

24 (d) For purposes of this section, a state bank's capital is impaired
25 when, in the opinion of the Commissioner, its assets are of such a character
26 and value that it is unable in the ordinary course of business to meet the
27 minimum capital requirements as specified from time to time by administrative
28 policies adopted by the Commissioner. In the absence of fraud or collusion,
29 the determination of the Commissioner as to impairment of capital is
30 conclusive.

31

32 23-48-313. Classes of stock -- Fractional shares -- Scrip.

33 (a)(1) The shares of the capital stock of any state bank may consist of
34 shares of common stock or of common and preferred stock. Common or preferred
35 stock may be divided into classes with such designations, preferences,
36 limitations, retirement provisions, and relative rights as shall be stated in

1 the articles of incorporation or an amendment thereto.

2 (2) The voting rights of any class of stock may be denied or restricted
3 except that the holder of stock belonging to a class of stock issued as
4 nonvoting shall be entitled to vote in respect to a dissolution or a merger or
5 consolidation, or in respect to any proposal that would adversely affect the
6 preferences, privileges, and other rights annexed to such shares. A
7 stockholder's right to vote under Arkansas Constitution, Article 12, Section
8 8, upon a proposal to increase the stock of the state bank may not be
9 abridged.

10 (b)(1) Unless prohibited by the articles of agreement, or an amendment
11 thereto, or by bylaws, a state bank may issue a certificate for a fractional
12 share or, by action of its board of directors, may issue, in lieu thereof,
13 scrip in bearer or registered form which shall entitle the holder to receive a
14 certificate for a full share upon the surrender of such scrip aggregating a
15 full share.

16 (2) Unless otherwise provided in the articles of agreement or in an
17 amendment thereto, or in the bylaws, a fractional share shall, but scrip shall
18 not, entitle the holder to exercise voting rights, to receive dividends
19 thereon, and to participate in any of the assets of the corporation in the
20 event of liquidation.

21 (3) Where scrip is issued, the directors may provide that it shall
22 become void if not exchanged for certificates representing full shares before
23 a specified date, or the board may provide that the shares for which the scrip
24 is exchangeable may be sold by the state bank and the proceeds thereof
25 distributed to the holders of the scrip.

26

27 23-48-314. Preemptive rights of stockholders.

28 (a) Unless otherwise provided by the articles of incorporation, every
29 stockholder, upon the sale for cash of any new stock of the same class as that
30 which he already holds, shall have the right to purchase his pro rata share
31 thereof at a price not exceeding the price at which it may be offered to
32 others, which price may be in excess of par.

33 (b) Where the articles of incorporation do not prohibit such preemptive
34 rights, the terms and conditions of the rights, and the time limit fixed for
35 the exercise thereof, may be prescribed in the articles of incorporation or,
36 if not so prescribed in the articles of incorporation, then in the bylaws or

1 in the resolution of the board of directors adopted in connection with the
 2 stock increase. Provided, however, that for all state banks chartered after
 3 May 30, 1997, there shall be no preemptive rights in stockholders except as
 4 specified in the articles of incorporation.

5

6 23-48-315. Issuance and sale of capital notes.

7 (a)(1) Any state bank may, through action of its board of directors and
 8 without requiring any action by stockholders, with the written consent of the
 9 Commissioner, issue and sell its capital notes at not less than par.

10 (2) The capital notes may be sold for cash or, with the written consent
 11 and approval of the Commissioner, for property.

12 (b)(1) The capital notes shall be in such denominations, and the holders
 13 thereof shall be entitled to such annual return thereon, as the Commissioner
 14 may approve.

15 (2) The capital notes shall provide that they may be retired at such
 16 time or times and in such manner as may be fixed by the board of directors of
 17 the state bank but in no event later than twenty (20) years after the date of
 18 their issuance.

19 (3) The par value of the notes shall not exceed one-half (1/2) of the
 20 capital base of the issuing state bank.

21 (4)(A) The state bank, in connection with the issue, subscription, or
 22 sale of capital notes, may confer upon the holder of each capital note the
 23 right to convert the note into shares of the common stock of the state bank on
 24 such terms as are set forth in the instrument evidencing the conversion
 25 rights. The terms may include any agreements not repugnant to law for the
 26 protection of the conversion rights, including, but without limiting, the
 27 generality of such authority:

28 (i) Restrictions upon the authorization or issuance of additional
 29 shares;

30 (ii) Provisions for the adjustment of the conversion price or
 31 ratio;

32 (iii) Provisions concerning rights in the event of reorganization,
 33 merger, consolidation, or sale or other disposition of all, or substantially
 34 all, of the assets of the corporation; and

35 (iv) Provisions for the reservation of authorized but unissued
 36 shares to satisfy the conversion rights.

1 (B) If the shares into which the obligations are convertible would be
2 subject to preemptive rights if issued for cash, the conferring of the
3 conversion rights must be authorized at a stockholders' meeting on a vote of
4 at least a majority of the shares of the issued and outstanding capital stock
5 of the state bank. The vote shall release the preemptive rights to the shares
6 required to satisfy such conversion rights.

7 (c)(1) Capital notes shall at the time of their issuance be, and shall
8 at all times thereafter remain, subordinate in rank and subject to the prior
9 payment of all types of deposits of the state bank.

10 (2) The state bank may, for the security and protection of the holders
11 of the capital notes, agree upon such restrictions on the distribution or
12 payment of dividends on its capital stock as the board of directors may
13 decide.

14 (d)(1) Capital notes and accrued return thereon may be retired at any
15 time, in whole or in part, with the written approval of the Commissioner,
16 unless otherwise provided in the capital notes.

17 (2) In any case where capital notes issued under the provisions of this
18 section are callable in a period less than twenty (20) years after their
19 issuance, the state bank issuing the capital notes may, by a provision
20 inserted therein to that effect, reserve the right, from time to time, to
21 extend the time for the retirement of the capital notes. In that event, the
22 state bank issuing the capital notes may, by vote of a majority of its board
23 of directors, with the consent of the Commissioner, make the extension.

24

25 23-48-316. Transfer of stock.

26 (a) The stock of every state bank shall be transferrable only on the
27 books of the bank.

28 (b) When any number of shares of the stock of a state bank or shares of
29 stock in an Arkansas bank holding company shall be transferred to any
30 transferee or joint transferees, the state bank or Arkansas bank holding
31 company shall promptly transmit to the Commissioner a certificate, on a form
32 prescribed by the Commissioner, showing such transfer. The certificate also
33 shall show the total number of shares at that time outstanding in the name of
34 the transferee or anyone known by the state bank or Arkansas bank holding
35 company to be the nominee of the transferee or holding in trust for the
36 transferee. If an Arkansas bank holding company is a reporting company under

1 § 13 or § 15(d) of the federal Securities and Exchange Act, then the Arkansas
 2 bank holding company may satisfy the reporting requirements under this section
 3 by reporting transfers one (1) time per year at such time and in such manner
 4 as required by the Commissioner.

5

6 23-48-317. Change in control.

7 (a) As used in this section, unless the context otherwise requires,
 8 control has the meaning set forth in 12 U.S.C. § 1841(a)(2).

9 (b)(1) Prior approval by the Commissioner of any transfer of ownership
 10 shall not be required unless and until:

11 (A) A transfer reported to the Commissioner would result in the control
 12 by the transferee and any nominee of the transferee and any person holding in
 13 trust for the transferee of twenty-five percent (25%) or more of the capital
 14 stock of the state bank or Arkansas bank holding company; or

15 (B) A transfer reported to the Commissioner would increase a then-
 16 existing ownership of the capital stock of a state bank or Arkansas bank
 17 holding company already controlled by the transferee to twenty-five percent
 18 (25%) or more of the capital stock of the state bank or Arkansas bank holding
 19 company.

20 (2) In either of the situations set out in subsections (b)(1)(A) and
 21 (b)(1)(B) of this section, no shares held in such ownership may be voted
 22 unless the ownership, and the transfers mentioned in subsections (b)(1)(A) and
 23 (b)(1)(B) of this section, shall be approved by the Commissioner and his
 24 approval given to the transferee in writing. The Commissioner in his
 25 discretion may at any time require any transferee to certify in writing as to
 26 the extent of the legal or beneficial ownership by the transferee of the stock
 27 of the state bank or Arkansas bank holding company.

28 (c) Any transferee seeking to acquire twenty-five percent (25%) or more
 29 of the capital stock of a state bank or Arkansas bank holding company shall
 30 file with the Commissioner an application for approval submitted to the
 31 Commissioner in such form as the Commissioner may prescribe, such application
 32 to be accompanied by a filing fee of not less than five hundred dollars (\$500)
 33 nor more than five thousand dollars (\$5000) as set by Department regulation.
 34 The application shall include the information set forth in subsection (d)
 35 hereof, and contain such additional information as the Commissioner may
 36 require.

1 (d) An application for approval to acquire control of a state bank or
 2 an Arkansas bank holding company, shall contain evidence that:

3 (1) The proposed transaction will promote the safety and soundness of
 4 the institution to be controlled;

5 (2) If the applicant is a bank holding company, the transaction will not
 6 result in a violation of the provisions of 23-48-405;

7 (3) The applicant bank or the bank subsidiaries of an applicant bank
 8 holding company adequately serve the convenience and needs of the communities
 9 served by them in accordance with the federal Community Reinvestment Act of
 10 1977; and

11 (4) The applicant intends to adequately serve the convenience and needs
 12 of the communities served by the state bank or state bank subsidiaries
 13 proposed to be controlled in accordance with the federal Community
 14 Reinvestment Act of 1977. The application shall specifically address the
 15 proposed initial capital investments, proposed loan policies, proposed
 16 investment policies, proposed dividend policies, and general plan of proposed
 17 business of the institution proposed to be controlled, including the full
 18 range of consumer and business services which are proposed to be offered.

19 (e) The Commissioner shall approve an application to acquire control of
 20 a state bank or an Arkansas bank holding company if he is satisfied that:

21 (1) The evidence and information contained in the application would
 22 result in the likelihood that the public interest would be served;

23 (2) The safety and soundness of the institution to be controlled is
 24 adequately addressed; and

25 (3) Approval of the application, if the applicant is a bank holding
 26 company, will not result in a violation of the provisions of 23-48-405.

27

28 23-48-318. Stockholder meetings -- Notice of special meeting.

29 (a) A special meeting of the stockholders, whether held for the purpose
 30 of amending the articles of incorporation or for any other lawful purpose, may
 31 be called as prescribed in the bylaws or, if the bylaws are silent in such
 32 respect, by the president or by resolution of the board of directors.

33 (b) Written notice of the special meeting shall be given to each
 34 stockholder entitled to vote at the meeting, other than stockholders who waive
 35 notice in writing, for the time and in the manner set out in the bylaws
 36 subject to the following minimum requirements:

1 (1) The notice must be signed by an officer of the state bank;

2 (2) The notice must state the time and place of the meeting and must
3 also state the nature of the proposals to be submitted to the stockholders at
4 the meeting;

5 (3) The notice must be mailed to each such stockholder, other than those
6 waiving notice, by first class mail, postage prepaid, directed to the
7 stockholder at the address of the stockholder shown on the stock records of
8 the state bank. The depositing of the notice in the mail as above prescribed
9 shall constitute the giving of the notice. It is not necessary in any event
10 that the mailing be by registered or certified mail;

11 (4) If the meeting is called for the purpose of increasing the
12 authorized capital stock of the state bank, the notice shall be mailed at
13 least sixty (60) days prior to the meeting, but if the meeting is called for
14 any other purpose, the notice shall be mailed for such number of days prior to
15 the meeting as may be prescribed in the bylaws. In no event shall mailing be
16 less than ten (10) days prior to the date of the meeting.

17 (c) Any stockholder may waive the right to receive notice of special
18 meetings of the stockholders by:

19 (1) A written waiver of the right, signed by the stockholder, which
20 shall be effective as a waiver until revoked; or

21 (2) The stockholder's attendance, in person or by proxy, at the
22 meeting.

23

24 23-48-319. Stockholder meetings -- Notice of annual meeting.

25 (a) Not less than ten (10) days written notice of an annual meeting
26 shall be given to each stockholder, other than stockholders who waive notice
27 in writing, which notice shall be mailed by first class mail, postage prepaid,
28 and directed to the stockholder at his address shown on the stock records of
29 the state bank.

30 (b) However, if it is proposed at an annual meeting to approve an
31 amendment to the articles of incorporation, or to approve a merger,
32 consolidation, conversion, corporate dissolution, or reorganization through
33 plan of exchange, the annual meeting will be regarded, so far as such special
34 matters are concerned, as a special meeting. It shall not be lawful to submit
35 such special matters at an annual meeting unless, in respect to the special
36 matters, there shall have been a call of the meeting and written notice given

1 all as required in 23-48-318 concerning special meetings.

2

3 23-48-320. Stockholder meetings -- Quorum -- Voting.

4 (a)(1) Each share of stock shall be entitled to one (1) vote on each
 5 matter submitted at a meeting of stockholders except to the extent that the
 6 voting rights of any class are limited or denied, to an extent permitted by
 7 law, by the articles of incorporation or an amendment thereto.

8 (2) Subject to the provisions of subsection (d) hereof, in electing
 9 directors at meetings of stockholders, each stockholder of a state bank shall
 10 have a right to vote the number of shares owned by him for as many persons as
 11 there are directors to be elected, or to cumulate said shares so as to give
 12 one (1) candidate as many votes as the number of directors multiplied by the
 13 number of shares of stock held by him shall equal. The stockholder may
 14 distribute his votes on the same principle among as many candidates as he
 15 shall see fit, unless it is provided otherwise in the articles of
 16 incorporation or the bylaws of the state bank.

17 (b) A majority of the issued and outstanding shares entitled to vote at
 18 the meeting shall constitute a quorum. If a quorum is present, the vote of a
 19 majority of the shares present or represented at the meeting and entitled to
 20 vote on the subject matter shall be the act of the stockholders unless the
 21 vote of a larger majority is required by the bylaws or by this or any other
 22 applicable statute.

23 (c) A stockholder may vote in person or by written proxy. No proxy
 24 shall be valid after eleven (11) months from the date of its execution unless
 25 otherwise provided in the proxy, but a proxy may be of indefinite duration if
 26 coupled with an interest.

27 (d) For all state banks chartered after May 30, 1997, there shall be no
 28 cumulative voting privilege unless the state bank's articles of incorporation
 29 so provide.

30

31 23-48-321. Closing transfer books -- Fixing record date.

32 (a) For the purpose of determining stockholders entitled to notice of,
 33 or to vote at, any annual or special meeting of stockholders or any
 34 adjournment thereof, or entitled to receive payment of any dividend, the board
 35 of directors of a state bank may provide that the stock transfer books shall
 36 be closed for a stated period but not to exceed, in any case, seventy (70)

1 days before the date of the meeting.

2 (b) In lieu of closing the stock transfer books, the board of directors
3 may fix a date in advance of the meeting as the record date for any such
4 determination of stockholders. The date in any case may not be more than
5 seventy (70) days prior to the date on which the meeting is to be held.

6 (c) If the stock transfer books are not closed and no record date is
7 fixed for the determination of stockholders entitled to notice of, or to vote
8 at, a meeting of stockholders, or stockholders entitled to receive payment of
9 a dividend, the date on which notice of the meeting is mailed or the date on
10 which the resolution of the board of directors declaring such dividend is
11 adopted, as the case may be, shall be the record date for such determination
12 of stockholders.

13 (d) When a determination of stockholders entitled to vote at any
14 meeting of stockholders has been made as provided in this section, such
15 determination shall apply to any adjournment thereof.

16

17 23-48-322. Board of directors -- Standard of conduct.

18 (a)(1)(A) The affairs of any state bank shall be managed and controlled
19 by a board of directors of not less than three (3) persons, who shall be
20 selected at such times and in such manner as may be provided by its bylaws.

21 (B) Members of the board of directors are not required to be
22 stockholders of the state bank or of its bank holding company unless so
23 provided in the bylaws of the state bank.

24 (2) The initial board of directors may be elected by the incorporators,
25 with the privilege of cumulative voting to have no application to the election
26 of the initial board.

27 (b) Any vacancy in the board of directors of any state bank shall be
28 filled by appointment by the remaining directors, and any director so
29 appointed shall hold office until the election of his successor.

30 (c) Unless the articles of incorporation, or an amendment thereto,
31 shall provide to the contrary, the directors shall have exclusive power to
32 promulgate, amend, or repeal bylaws of the state bank.

33 (d) A director of a bank which maintains its main banking office within
34 the state of Arkansas shall discharge his or her duties as a director,
35 including his or her duties as a member of any committees:

36 (1) In good faith;

1 (2) With the care an ordinary prudent person in a like position would
2 exercise under similar circumstances; and

3 (3) In a manner he or she reasonably believes to be in the best interest
4 of the bank.

5 (e) In discharging his or her duties, a director shall be entitled to
6 rely on information, opinions, reports, or statements, including financial
7 statements and other financial data, if prepared or presented by:

8 (1) One (1) or more officers or employees of the bank whom the director
9 reasonably believes to be reliable and competent in the matters presented;

10 (2) Legal counsel, public accountants, or other persons as to matters
11 the director reasonably believes are within the person's professional or
12 expert competence; or

13 (3) A committee of the board of directors of which he or she is not a
14 member, if the director reasonably believes the committee merits confidence.

15 (f) A director is not acting in good faith if he or she has knowledge
16 concerning the matter in question that makes reliance otherwise permitted in
17 subsection (e) of this section unwarranted.

18 (g) A director is not liable for any action taken as a director, or any
19 failure to take any action, if he or she performed the duties of his or her
20 office in compliance with this section.

21

22 23-48-323. Officers -- Selection, term, etc.

23 (a) A state bank shall have a president, a secretary, and such other
24 officers as the directors may from time to time designate. An individual may
25 hold more than one (1) office.

26 (b) Such officers shall hold their offices for a term of one (1) year
27 or until successors are elected unless sooner removed by the board.

28 (c) The board shall require such bonds of the officers as it shall deem
29 proper and necessary to protect the funds of the state bank.

30

31 23-48-324. Officers -- Taking acknowledgments.

32 (a) An official of a bank who holds a commission as notary public may
33 act as notary in taking the acknowledgment of mortgages and deeds of trust
34 executed in favor of such bank. All such instruments previously acknowledged
35 in this manner are declared to have been lawfully acknowledged and entitled to
36 record.

1 (b) This section does not authorize such official to take the
2 acknowledgment of a deed of trust wherein he is named the trustee.

3

4 23-48-325. Banker's banks.

5 (a) Any state bank may purchase, for its own account, shares of a bank
6 or bank holding company if:

7 (1) The stock of the bank or bank holding company whose shares are
8 being purchased is owned exclusively by financial institutions; and

9 (2) The bank or bank holding company whose shares are being purchased
10 and all subsidiaries thereof are engaged exclusively in providing services for
11 financial institutions, their parent holding companies, subsidiaries thereof,
12 and the officers, directors, and employees of each.

13 (b) In no event shall the total amount of stock held by a bank in any
14 bank or bank holding company described in subsection (a) of this section
15 exceed at any time ten percent (10%) of the holding bank's capital base. In
16 no event shall the purchase of that stock result in the purchasing bank
17 acquiring more than five percent (5%) of any class of voting securities of the
18 bank or bank holding company whose shares are purchased.

19 (c) The Commissioner is authorized to receive applications, hold
20 hearings on the applications, and, with the approval of the Banking Board,
21 issue charters for a banker's bank.

22 (d) Any banker's bank chartered under this section must have its
23 deposits insured by the Federal Deposit Insurance Corporation.

24

25 23-48-326. Application of Arkansas Business Corporation Act of 1987.

26 All state banks and subsidiary trust companies shall be subject to
27 current provisions of the Arkansas Business Corporation Act of 1987 to the
28 extent that those provisions are not in conflict with the provisions of this
29 act. In the event that any provision of the Arkansas Business Corporation Act
30 of 1987 is in conflict with any provision of this act, then the provision of
31 this act shall control.

32

33 Subchapter 4 -- BANK HOLDING COMPANIES

34

35 23-48-401. Definitions.

36 As used in this part, unless the context otherwise requires:

1 (1) Bank subsidiary, with respect to a specified bank holding
2 company, means:

3 (A) Any bank, twenty-five percent (25%) or more of whose shares,
4 excluding shares owned by the United States or by any company wholly owned by
5 the United States, are owned or controlled by the bank holding company;

6 (B) Any bank, the election of a majority of whose directors is
7 controlled in any manner by the bank holding company;

8 (C) Any bank, twenty-five percent (25%) or more of whose voting shares
9 are held by a trustee for the benefit of the shareholders or members of the
10 bank holding company;

11 (D) Any bank, with respect to the management or policies of which, the
12 Board of Governors of the Federal Reserve has determined that such bank
13 holding company has the power, directly or indirectly, to exercise a
14 controlling influence; or

15 (E) Any bank which has been found by the Board of Governors of the
16 Federal Reserve to be controlled by a bank holding company.

17 (2) Company means any corporation, limited liability company, or
18 business trust doing business in this state but shall not include any
19 corporation the majority of the shares of which are owned by the United States
20 or by any state.

21

22 23-48-402. Nonapplicability of subchapter.

23 (a) This subchapter shall not apply to shares of any company:

24 (1) Acquired by a bank holding company or by a bank in satisfaction of a
25 debt previously contracted in good faith;

26 (2) Which are held or acquired by a bank in good faith in a fiduciary
27 capacity; or

28 (3) Which are of the kinds and amounts eligible for investments by state
29 banks under the provisions of 23-47-401.

30 (b) Notwithstanding subsection (a) hereof, a bank holding company or a
31 state bank shall dispose of shares acquired in satisfaction of a debt
32 previously contracted in good faith within a period of two (2) years from the
33 date on which they were acquired. The Commissioner is authorized upon
34 application to extend, from time to time for up to an additional three (3)
35 years, for not more than one (1) year at a time, the two-year period referred
36 to above for disposing of any shares acquired by a bank holding company, or

1 state bank, in the regular course of securing or collecting a debt previously
 2 contracted in good faith, if, in the Commissioner's judgment, such an
 3 extension would not be detrimental to the public interest, but no such
 4 extensions shall, in the aggregate, exceed three (3) years. However, a bank
 5 holding company shall not be prohibited from purchasing such shares from any
 6 of its banking subsidiaries, subject to the provisions of 23-48-405 and 406.

7
 8 23-48-403. Penalties.

9 (a) Any person which willfully violates any provision of this part, or
 10 order issued by the Commissioner pursuant thereto, or any Department
 11 regulation is guilty of a class A misdemeanor.

12 (b) Any individual who willfully participates in a violation of any
 13 provision of this subchapter shall, upon conviction, be fined not less than
 14 one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or
 15 imprisoned not more than one (1) year, or both.

16
 17 23-48-404. Administration.

18 The Commissioner is authorized to and shall administer and carry out the
 19 provisions of this subchapter and shall issue such regulations and orders as
 20 may be necessary to discharge this duty and to prevent evasions of this part.

21
 22 23-48-405. Ownership or control of subsidiaries.

23 It shall be unlawful for a bank holding company to directly or
 24 indirectly own or control more than one (1) bank subsidiary if any such bank
 25 subsidiary has a de novo charter.

26
 27 23-48-406. Acquisition of bank stock or assets -- Limitations.

28 (a) A bank holding company is prohibited from acquiring ownership or
 29 control of the stock or the assets of any bank if, after giving effect to the
 30 acquisition of the stock or the assets of that bank, the acquiring bank
 31 holding company would own or control, directly or indirectly, banks having in
 32 the aggregate more than twenty-five percent (25%) of the total deposits held
 33 by all banks having main offices within the state.

34 (b) Determinations of the percentage of total deposits required by
 35 subsection (a) of this section shall be made as of the date of acquisition of
 36 the stock or assets. The determinations shall be made with reference to the

1 average total deposits of the respective banks as reflected on their quarterly
 2 financial reports for the four (4) fiscal quarters immediately preceding the
 3 date of acquisition as filed with the Federal Deposit Insurance Corporation,
 4 or its successor, or if the deposits of the bank are not insured by the
 5 Federal Deposit Insurance Corporation, then as filed with the Department, or
 6 its successor.

7 (c) For the purpose of this section, the term "deposits" shall include,
 8 without limitation, all demand, savings, time, certificates of deposit, and
 9 other similar depository accounts of any person, but shall not include
 10 depository accounts of banks or public funds.

11 (d) Nothing in this section is intended to prevent any bank holding
 12 company domiciled in the State of Arkansas from acquiring ownership or control
 13 of banks domiciled outside the State of Arkansas if applicable state or
 14 federal laws permit the Arkansas bank holding company to do so. However,
 15 except as permitted by applicable federal law or specifically authorized by
 16 this act, no bank holding company domiciled outside the State of Arkansas
 17 shall be authorized to acquire direct or indirect control of a bank domiciled
 18 within the State of Arkansas.

19

20 Subchapter 5. MERGERS, CONSOLIDATIONS, CONVERSIONS,
 21 EMERGENCY ACQUISITIONS, PURCHASES OR ASSUMPTIONS

22

23 23-48-501. Definitions.

24 As used in this part, unless the context otherwise requires:

25 (1) Converting bank means a state bank converting to a national bank,
 26 a national bank converting to a state bank, or a savings and loan association
 27 converting to a state bank;

28 (2) Dissenters' rights means the rights of dissenting stockholders
 29 specified in 23-48-506;

30 (3) Merger includes consolidation in all sections of this subchapter
 31 except 23-48-509;

32 (4) Merging bank means a bank which is a party to a merger and which
 33 is not the resulting bank;

34 (5) Purchase or assumption means the purchase by a state bank of over
 35 fifty percent (50%) of the assets of another depository institution, or the
 36 assumption by a state bank of over fifty percent (50%) of the liabilities of

1 another depository institution;

2 (6) Resulting bank means the bank resulting from a merger or
3 conversion, or the bank purchasing over fifty percent (50%) of the assets or
4 assuming over fifty percent (50%) of the liabilities of another depository
5 institution in a purchase or assumption transaction;

6 (7) Wholly owned Arkansas bank holding company means a bank holding
7 company, as that term is defined in 23-45-102, incorporated under the laws of
8 the State of Arkansas, all of the outstanding shares of each class of the
9 capital stock of which is owned by a single individual or entity.

10

11 23-48-502. Merger or conversion of state bank into national bank.

12 (a) Subject to the provisions of this subchapter and provided that
13 parties to a merger do not have a de novo charter, a state bank may merge into
14 a national bank.

15 (b) The action to be taken by a merging or converting state bank and
16 its rights and liabilities and those of its shareholders shall be the same as
17 those prescribed for national banks, at the time of the action, by the laws of
18 the United States, and not by the law of this state, except that:

19 (1) The assenting vote of the holders of a simple majority of each class
20 of voting stock of a state bank shall be required for the merger or
21 conversion; and

22 (2) Upon the merger of a state bank into a national bank, the
23 stockholders of the state bank shall have dissenters' rights.

24 (c) No approval by the Commissioner or by any other state authority
25 shall be necessary for a state bank to convert or merge into a resulting
26 national bank as provided by federal law. However, within ten (10) days
27 following the effective date of the merger or conversion, the resulting bank
28 shall be required to file in the office of the Commissioner, a complete copy
29 of the articles of merger or conversion. This copy must be certified by the
30 president or a vice president of the resulting bank.

31 (d) Upon the completion of the merger or conversion, the charter of any
32 merging or converting state bank shall automatically terminate.

33

34 23-48-503. Merger of bank or savings and loan association into state
35 bank.

36 (a) With the approval of the Commissioner and the Banking Board and

1 after a public hearing as prescribed by the applicable law of this state, any
 2 bank or savings and loan association may be merged with a state bank to result
 3 in a state bank, provided that, if any national bank or savings and loan
 4 association shall be involved in the merger, there shall be compliance with
 5 the requirements of the state or federal laws applicable to such national bank
 6 or savings and loan association. A bank or savings and loan association may
 7 merge into a state bank provided the parties to the merger do not have a de
 8 novo charter. The applicant shall file an application with the Commissioner
 9 containing such information as the Commissioner may require. The assenting
 10 vote of a simple majority of each class of voting stock of the merging bank
 11 and resulting bank shall be required for the merger, provided that no vote of
 12 the shareholders of the resulting bank shall be required if the number of
 13 shares to be issued in connection with the merger does not exceed twenty
 14 percent (20%) of the outstanding shares of the resulting bank prior to the
 15 merger.

16 (b) The Commissioner shall provide the Banking Board with the results of
 17 the investigation of the application.

18 (c) The Commissioner shall approve the application if, at the hearing,
 19 both the Commissioner and the Banking Board find that:

- 20 (1) The proposed merger provides adequate capital structure;
- 21 (2) The terms of the merger agreement are fair;
- 22 (3) The merger is not contrary to the public interest;
- 23 (4) The proposed merger adequately provides for dissenters' rights; and
- 24 (5) The requirements of all applicable state and federal laws have been
 25 complied with.

26

27 23-48-504. Conversion of national bank or savings and loan association
 28 into state bank.

29 (a) A national bank or savings and loan association having its main
 30 office in this state which follows the procedure prescribed by applicable
 31 federal or other law may convert into a state bank and may be granted a
 32 charter by the Banking Board, with the concurrence of the Commissioner.

33 (b) The national bank or savings and loan association may apply for a
 34 state charter by filing with the Commissioner an application containing such
 35 information the Commissioner may require along with a certificate signed by
 36 its president or a vice president setting forth the action taken in compliance

1 with the provisions of the applicable laws, accompanied by the articles of
 2 incorporation approved by a majority vote of the stockholders for the
 3 governance of the applicant as a state bank.

4 (c) The public hearing at which the issuance of the state charter is
 5 authorized shall be called by the Commissioner:

6 (1) On not less than fourteen (14) days written notice to the applicant
 7 and to each member of the Banking Board; and

8 (2) Upon publication in a newspaper published in the City of Little Rock
 9 and having a general and substantially statewide circulation, at least
 10 fourteen (14) days before the hearing, publication to show the time, place,
 11 and purpose of the hearing.

12 (d) If, at the hearing, both the Commissioner and the Banking Board find
 13 that the proposed state bank meets the standards as to location of offices,
 14 capital structure, and character of officers and directors required for the
 15 incorporation of a state bank, they shall grant the application for
 16 conversion.

17

18 23-48-505. Provisions when resulting state bank not to exercise trust
 19 powers.

20 Where a resulting state bank is not to exercise trust powers, the
 21 Commissioner shall not approve a merger or conversion until satisfied that
 22 adequate provision has been made for successors to fiduciary positions held by
 23 the merging banks or the converting bank.

24

25 23-48-506. Dissenting stockholders.

26 (a) For purposes of this section, with respect to a state bank:

27 (1) Corporate action means:

28 (A) Consummation of a merger to which the state bank is a party;

29 (B) Consummation of a sale or transfer of over fifty percent (50%)
 30 of the state bank's assets to another depository institution; or

31 (C) Consummation of a sale or transfer of over fifty percent (50%)
 32 of the state bank's liabilities to another depository institution;

33 (2) Selling bank means a state bank selling or transferring over fifty
 34 percent (50%) of its assets or over fifty percent (50%) of its liabilities to
 35 another depository institution.

36 (b)(1) The owner of shares of a state bank which were not voted for a

1 corporate action, and who has given notice in writing to the state bank at or
2 prior to the meeting of the stockholders approving the corporate action, that
3 he dissents from the corporate action shall be entitled to receive in cash the
4 value of the shares held by him, if the dissenting stockholder has delivered a
5 written demand for payment to the resulting bank at any time within ten (10)
6 days after the date on which the stockholders' meeting authorizing the
7 corporate action was concluded.

8 (2) This written demand for payment shall state the number and the class
9 of shares owned by the dissenting stockholder. Any dissenting stockholder
10 failing to make the demand shall be bound by the terms of the purchase or
11 assumption, or merger.

12 (3) The resulting bank shall fix an amount, which it considers to be not
13 more than the fair market value of the shares of the merging, resulting, or
14 selling bank as of the date on which the stockholders' meeting authorizing the
15 corporate action was concluded, which it will offer to pay dissenting
16 stockholders entitled to payment in cash. Upon receipt from a dissenting
17 stockholder of a written demand for payment in cash of the fair value of his
18 shares, the resulting bank shall give the dissenting stockholder notice of the
19 amount it will pay for dissenting shares within twenty (20) days after the
20 date on which the stockholders' meeting authorizing the corporate action was
21 concluded.

22 (4) Any dissenting stockholder may agree to accept the amount in lieu of
23 pursuing the appraisal remedy set forth below by delivering a written
24 acceptance of the offer to the resulting bank within thirty (30) days after
25 the date on which the stockholders' meeting authorizing the corporate action
26 was concluded.

27 (c)(1) The value of shares held by dissenting stockholders entitled to
28 receive in cash the value of the shares held by them, who do not accept the
29 offer of the resulting bank within the thirty-day period set forth above,
30 shall be determined as of the date on which the stockholders' meeting
31 authorizing the corporate action was concluded by three (3) appraisers. The
32 appraisers are to be chosen as follows:

33 (A) One (1) shall be selected by the dissenting stockholders by the vote
34 of a majority of the aggregate number of dissenting shares held by the
35 dissenting stockholders;

36 (B) One (1) shall be selected by the board of directors of the resulting

1 bank; and

2 (C) The third shall be selected by the two (2) so chosen.

3 (2) The valuation agreed upon by any two (2) of the three (3) appraisers
4 thus chosen shall govern. However, if the value so fixed shall not be
5 satisfactory to any dissenting stockholder who has requested payment as
6 provided herein, the stockholder may, within five (5) days after being
7 notified of the appraised value of his shares, appeal to the Commissioner, who
8 shall cause a reappraisal to be made, which shall be final and binding as to
9 the value of the shares of the appellant.

10 (3) If, within ninety (90) days after the date on which the
11 stockholders' meeting authorizing the corporate action was concluded, for any
12 reason, one (1) or more of the appraisers is not selected as provided in this
13 section, or the appraisers fail to determine the value of dissenting shares,
14 the Commissioner shall, upon written request of any interested party made
15 within five (5) days after the expiration of the ninety-day period, cause an
16 appraisal to be made which shall be final and binding upon all parties.

17 (d)(1) The expenses of the appraiser selected by the dissenting
18 stockholders shall be paid by the dissenting stockholders.

19 (2) The expenses of the appraiser selected by the board of directors of
20 the resulting bank shall be paid by the resulting bank.

21 (3) The expenses of the third appraiser shall be paid by and prorated
22 among the dissenting stockholders and the resulting bank in such a manner as
23 is determined by the Commissioner to be fair and equitable under the
24 circumstances.

25 (e)(1) If the Commissioner is required to make the appraisal, his
26 expenses in making the appraisal shall be paid by and prorated among the
27 dissenting stockholders and the resulting bank in such a manner as is
28 determined by the Commissioner to be fair and equitable under the
29 circumstances.

30 (2) If the Commissioner is required to make a reappraisal, his expenses
31 in making the reappraisal shall be paid by the appellant.

32 (f) If, within ninety (90) days after the date on which the
33 stockholders' meeting authorizing the corporate action was concluded, for any
34 reason, one (1) or more of the appraisers are not selected as provided in this
35 section or the appraisers fail to determine the value of dissenting shares,
36 and if no written request to value the dissenting shares is filed with the

1 Commissioner within five (5) days after the expiration of the ninety-day
2 period, then all dissenting stockholders who have failed to accept the offer
3 of the resulting bank within the thirty-day period prescribed above shall be
4 bound by the terms of the purchase or assumption, or merger.

5 (g) The amount due a dissenting stockholder under an accepted offer of
6 the resulting bank or under the appraisal shall constitute a debt of the
7 resulting bank which must be paid, if and when the purchase or assumption, or
8 merger, is consummated, simultaneously with the surrender by the dissenting
9 stockholder of his shares.

10 (h) Within ten (10) days after the corporate action, the resulting bank
11 shall give written notice of the consummation of the corporate action to each
12 dissenting stockholder who is entitled to receive in cash the fair value of
13 his shares.

14 (i) The plan of merger, or the plan of purchase or assumption, shall
15 provide for payment of or the manner of disposing of any shares of the
16 resulting bank not taken by dissenting stockholders.

17

18 23-48-507. Continuation of corporate entity -- Use of old name.

19 (a) A resulting bank shall be the same business and corporate entity as
20 each party to the merger or as the converting bank, with all the property,
21 rights, powers, liabilities, and duties of each party to the merger or the
22 converting bank, except as affected by the state law in the case of a
23 resulting state bank or the federal law in the case of a resulting national
24 bank and by the charter and bylaws of the resulting bank.

25 (b) A resulting bank shall have the right to use the name of any party
26 to the merger or of the converting bank whenever it can more conveniently do
27 any act under that name.

28 (c) Any reference to a party to the merger or converting bank in a
29 contract, will, or document, whether executed or taking effect before or after
30 the merger or conversion, shall be deemed to refer and apply to the resulting
31 bank if not inconsistent with the other provisions of the writing.

32

33 23-48-508. Resulting state bank -- Time for conformance with state law.

34 If a party to a merger or converting bank has assets which do not
35 conform to the requirements of state law for the resulting state bank or if it
36 carries on business activities which are not permitted for the resulting state

1 bank, the Commissioner may permit a reasonable time in which to conform with
2 state law.

3

4 23-48-509. Merger of wholly owned Arkansas bank holding company into
5 state bank.

6 (a) With the approval of the Commissioner, any wholly owned Arkansas
7 bank holding company that owns all of the outstanding shares of each class of
8 the capital stock of a subsidiary state bank may be merged into such bank to
9 result in a state bank without the approval of the shareholders of either the
10 wholly owned Arkansas bank holding company or the state bank, provided that
11 the merger otherwise complies with the then-applicable law of this state.

12 (b) The board of directors of the wholly owned Arkansas bank holding
13 company and the board of directors of the state bank shall adopt a plan of
14 merger that sets forth:

15 (1) The names of the wholly owned Arkansas bank holding company and
16 state bank; and

17 (2) The manner and basis of converting the shares of the wholly owned
18 Arkansas bank holding company into shares of the state bank.

19 (c) The articles of merger containing the plan of merger, signed by each
20 constituent corporation by its president or a vice president, shall be filed
21 with the Commissioner in the manner required by law for the merger of state
22 banks, and after the Commissioner's approval, with the Secretary of State in
23 the manner required by law for the merger of business corporations.

24 (d) The articles of merger shall become effective upon the filing of the
25 articles with the Secretary of State and, not more than sixty (60) days after
26 the approval of the articles by the Commissioner, as may be specified in the
27 articles as the time when the merger shall become effective.

28

29 23-48-510. Purchases or assumptions by a state bank.

30 (a)(1) With the approval of the Banking Board and the concurrence of
31 the Commissioner and subject to the provisions of this subchapter and provided
32 that no party to a proposed transaction has a de novo charter, a state bank
33 may purchase all or a majority of the assets or assume all or a majority of
34 the liabilities of another depository institution.

35 (2) The agreement of purchase and sale shall be authorized and approved
36 by the boards of directors of the purchasing state bank and selling depository

1 institution. The agreement shall be approved by the affirmative vote of the
 2 holders of at least a simple majority of the outstanding shares of the selling
 3 depository institution entitled to vote thereon, at a meeting called for the
 4 purpose in like manner as meetings to approve mergers are called, and an
 5 application containing such information as the Commissioner may require shall
 6 be filed with the Commissioner.

7 (3) The Commissioner shall cause the application to be investigated as
 8 soon as practicable and the application and the results of the investigation
 9 shall be forwarded to the Banking Board.

10 (4) The Banking Board shall hold a public hearing on the application
 11 pursuant to notice and procedure required for such applications.

12 (5) The Commissioner shall approve the application if, at the hearing,
 13 both the Commissioner and the Banking Board find that the proposed purchase or
 14 assumption:

15 (A) Provides adequate capital structure;

16 (B) Is fair;

17 (C) It is not contrary to public interest; and

18 (D) Adequately provides for dissenters' rights for the stockholders of
 19 any selling state bank.

20 (b)(1) With the approval of the Commissioner a state bank may assume
 21 less than a majority of the liabilities of another depository institution.

22 (2) The agreement of purchase and sale for the assumption of the
 23 liabilities referred to in subsection (b)(1) of this section shall be
 24 authorized and approved by the boards of directors of the assuming state bank
 25 and selling depository institution.

26 (3)(A) A state bank seeking to assume less than a majority of the
 27 liabilities of another depository institution shall file with the Commissioner
 28 an application containing such information as the Commissioner may require.

29 (B) The Commissioner shall have such application investigated as soon
 30 as practicable and shall approve the application if he is satisfied that the
 31 proposed assumption:

32 (i) Provides adequate capital structure;

33 (ii) Is fair; and

34 (iii) Is not contrary to public interest.

35 (c) No approval by the Commissioner or the Banking Board is required
 36 for the purchase by a state bank of less than a majority of the assets of

1 another depository institution.

2

3 23-48-511. Commissioner's granting of new charter or branch facility in
4 connection with failed institutions.

5 (a) Upon application of either individual incorporators or a bank
6 holding company, the Commissioner is authorized to grant a state bank charter
7 to such applicant immediately and without the approval of the Banking Board,
8 if the Commissioner finds that the immediate formation of a new state bank
9 will protect the depositors of a failed depository institution when the
10 receiver of the failed depository institution has solicited bids for the sale
11 of its deposits.

12 (b) The Commissioner is further authorized to grant more than one (1)
13 state bank charter pursuant to solicitation of bids by the receiver of a
14 failed depository institution should the receiver determine to solicit bids
15 for deposits at separate offices or branches of a failed depository
16 institution.

17 (c) Any state bank charter granted by the Commissioner pursuant to this
18 section shall not be considered a de novo charter, as that term is defined in
19 23-45-102.

20 (d) The Commissioner may grant a branch bank application for a state
21 bank to acquire the deposits and operate a branch of a failed depository
22 institution regardless of state law limiting branch locations should the
23 application be submitted pursuant to the solicitation of bids by the receiver
24 of a failed depository institution and should the Commissioner find the action
25 would protect depositors of the failed depository institution. The
26 Commissioner may grant an application for a state bank to acquire deposit
27 liabilities without continued operation of a bank facility if the applicant
28 has submitted an application therefor pursuant to this section.

29

30 Subchapter 6 - REORGANIZATION THROUGH PLAN OF EXCHANGE

31

32 23-48-601. Authority to adopt plan of exchange -- Approval by
33 Commissioner required.

34 (a)(1) A state bank may adopt a plan of exchange of all of the
35 outstanding capital stock held by its stockholders, for the consideration
36 designated in this section to be paid or provided by a bank holding company

1 which acquires the stock, in the manner provided in this part, by complying
2 with the provisions of this part, subject to subsections (b)-(e) of this
3 section.

4 (2) The plan of exchange may provide that the bank holding company, as
5 the acquiring person, as consideration for the stock of the state bank may:

6 (A) Transfer shares of its capital stock;

7 (B) Transfer other securities issued by it;

8 (C) Pay cash;

9 (D) Pay or provide other consideration; or

10 (E) Pay or provide any combination of the foregoing types of
11 consideration.

12 (b) No such plan of exchange shall be effectuated unless, in advance
13 thereof, the plan has been filed with the Commissioner and approved in writing
14 by him after notice and a hearing thereon. The Commissioner shall give
15 approval within a reasonable time after the hearing unless he finds the plan:

16 (1) Is contrary to law;

17 (2) Is inequitable to the stockholders of the state bank involved;

18 (3) Would not provide a satisfactory means for disposing of shares of
19 the state bank resulting from dissenting stockholders; or

20 (4) Would substantially reduce the security of or service to be rendered
21 to depositors or other customers of the state bank or any affiliate bank of
22 the state bank or the bank holding company.

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

27 (d) If the Commissioner does not approve the plan of exchange, the
28 Commissioner shall notify the state bank in writing specifying the reasons
29 therefor.

30 (e) For every plan of exchange filed with the Commissioner under
31 subsection (b) of this section, there shall be paid to the Department by the
32 state bank involved a filing fee equal to one-tenth of one percent (.1%) of
33 the paid-up capital stock of the state bank. However, the fee shall in no
34 case be less than five hundred dollars (\$500) or more than one thousand
35 dollars (\$1,000). In addition, the state bank shall pay all expenses and
36 costs of the Department incurred in connection with the plan of exchange and

1 the hearing thereon including, but not limited to, travel expenses, mail and
 2 delivery charges, copying costs, and court reporters' fees. The Commissioner
 3 may by order reduce or waive the filing fee, but not the payment of the
 4 expenses and costs of the Department, if the Commissioner determines that the
 5 fee is excessive under the circumstances.

6

7 23-48-602. Procedure for adopting and filing plan of exchange.

8 (a) The directors, consisting of at least a majority, of a state bank
 9 and bank holding company who desire to adopt a plan of exchange pursuant to
 10 this subchapter shall adopt a plan of exchange, signed by them under their
 11 respective corporate seals, which shall prescribe and set forth:

12 (1) The terms and conditions of the plan of exchange;

13 (2) The mode of carrying it into effect;

14 (3) Provisions with respect to abandonment;

15 (4) The effective date of the exchange of shares or the method of
 16 determination thereof;

17 (5) The manner and basis of any cash payment or issuance or exchange of
 18 shares of stock or other securities of the bank holding company for shares of
 19 the state bank; and

20 (6) Such other details and provisions as are deemed necessary or
 21 desirable.

22 (b)(1) The plan of exchange shall be submitted to the stockholders of
 23 the state bank to be acquired at a meeting thereof called for that purpose.

24 (2) Notice shall be given of the time, place, and purpose of the meeting
 25 to each stockholder or member of record, whether entitled to vote or not.

26 (3) At the meeting, the plan of exchange shall be considered by the
 27 stockholders entitled to vote thereon. A vote by ballot, in person or by
 28 proxy, shall be taken for the adoption or rejection of the plan. Unless
 29 otherwise provided in the state bank's articles of incorporation for voting on
 30 a plan of exchange, the plan of exchange shall be approved upon receiving the
 31 affirmative vote of the holders of at least a simple majority of the
 32 outstanding shares of the state bank entitled to vote thereon. However, if
 33 any class of shares of the state bank is entitled to vote as a class on the
 34 plan, the plan of exchange shall be approved upon receiving the affirmative
 35 vote of the holders of at least a simple majority of the outstanding shares of
 36 each class of shares entitled to vote as a class on the plan and the total

1 outstanding shares entitled to vote on the plan. If the plan of exchange is
2 approved by the stockholders of the state bank, then that fact shall be
3 certified in the plan by the president or a vice president of the state bank.

4 (4) The plan so adopted and certified shall be signed by the president
5 or a vice president of each party to the plan of exchange, and acknowledged
6 before an officer authorized by law to take acknowledgment of deeds.

7 (c) The plan, adopted and certified as provided in subsection (b) of
8 this section, shall be filed in duplicate originals with the Commissioner
9 prior to the hearing on the plan and within ten (10) days following the
10 approval of stockholders and, after approval thereof by the Commissioner as
11 provided in 23-48-601 shall be taken and deemed to be the plan of exchange of
12 the parties thereto.

13 (d) Any plan of exchange may be abandoned in conformity with the terms
14 thereof as approved by the Commissioner provided, in that event, due notice of
15 abandonment shall be forthwith transmitted to the stockholders of the state
16 bank, and to the secretary of the bank holding company which are parties
17 thereto, within ten (10) days of the abandonment in a manner and form
18 prescribed or approved by the Commissioner.

19

20 23-48-603. Dissenting from plan of exchange.

21 (a)(1) The owner of shares of a state bank which were voted against a
22 plan of exchange, and who has given notice in writing to the state bank, at or
23 prior to the meeting of the stockholders approving the plan, that he dissents
24 from the plan of exchange, shall be entitled to receive in cash the value of
25 the shares held by him, if the plan of exchange is consummated and if the
26 dissenting stockholder has delivered a written demand for payment to the state
27 bank at any time within ten (10) days after the date on which the
28 stockholders' meeting authorizing the plan of exchange was concluded.

29 (2) This written demand for payment shall state the number and the class
30 of shares owned by the dissenting stockholder. Any dissenting stockholder
31 failing to make such a demand shall be bound by the terms of the plan of
32 exchange.

33 (3) The state bank shall fix an amount which it considers to be not more
34 than the fair market value of the shares of the state bank as of the date on
35 which the stockholders' meeting authorizing the plan of exchange was
36 concluded, which it will offer to pay dissenting stockholders entitled to

1 payment in cash. Upon receipt from a dissenting stockholder of a written
 2 demand for payment in cash of the fair value of his shares, the state bank
 3 shall give the dissenting stockholder notice of the amount it will pay for
 4 dissenting shares within twenty (20) days after the date on which the
 5 stockholders' meeting authorizing the plan of exchange was concluded.

6 (4) Any dissenting stockholder may agree to accept the amount in lieu of
 7 purchasing the appraisal remedy set forth in subsection (b) of this section by
 8 delivering a written acceptance of the offer to the state bank within thirty
 9 (30) days after the date on which the stockholders' meeting authorizing the
 10 plan of exchange was concluded.

11 (b)(1) The value of shares held by dissenting stockholders, entitled to
 12 receive in cash the value of the shares held by them, who do not accept the
 13 offer of the state bank within the thirty-day period set out in subdivision
 14 (a)(4) of this section shall be determined as of the date on which the
 15 stockholders' meeting authorizing the plan of exchange was concluded by three
 16 (3) appraisers:

17 (A) One (1) shall be selected by the dissenting stockholders by
 18 the vote of a majority of the aggregate number of dissenting shares held by
 19 the dissenting stockholders;

20 (B) One (1) shall be selected by the board of directors of the
 21 state bank; and

22 (C) The third shall be selected by the two (2) so chosen.

23 (2) The valuation agreed upon by any two (2) of the three (3) appraisers
 24 thus chosen shall govern. However, if the value so fixed shall not be
 25 satisfactory to any dissenting stockholder who has requested payment as
 26 provided herein, the stockholder may, within five (5) days after being
 27 notified of the appraised value of his shares, appeal to the Commissioner.
 28 The Commissioner shall cause a reappraisal to be made, which shall be final
 29 and binding as to the value of the shares of the appellant.

30 (3) If, within ninety (90) days after the date on which the
 31 stockholders' meeting authorizing the plan of exchange was concluded, for any
 32 reason, one (1) or more of the appraisers is not selected as herein provided,
 33 or the appraisers fail to determine the value of dissenting shares, the
 34 Commissioner shall, upon written request of any interested party made within
 35 five (5) days after the expiration of the ninety-day period, cause an
 36 appraisal to be made which shall be final and binding upon all parties.

1 (c)(1) The expenses of the appraiser selected by the dissenting
 2 stockholders shall be paid by the dissenting stockholders.

3 (2) The expenses of the appraiser selected by the board of directors of
 4 the state bank shall be paid by the state bank.

5 (3) The expenses of the third appraiser shall be paid by and prorated
 6 among the dissenting stockholders and the state bank in such manner as is
 7 determined by the Commissioner to be fair and equitable under the
 8 circumstances.

9 (d)(1) If the Commissioner is required to make the appraisal, the
 10 expenses of the Commissioner in making the appraisal shall be paid by and
 11 prorated among the dissenting stockholders and the state bank in such manner
 12 as is determined by the Commissioner to be fair and equitable under the
 13 circumstances.

14 (2) If the Commissioner is required to make a reappraisal, the expenses
 15 of the Commissioner in making the reappraisal shall be paid by the appellant.

16 (e) If, within ninety (90) days after the date on which the
 17 stockholders meeting authorizing the plan of exchange was concluded, for any
 18 reason, one (1) or more of the appraisers is not selected as provided above or
 19 the appraisers fail to determine the value of dissenting shares, and, if no
 20 written request to value the dissenting shares is filed with the Commissioner
 21 within five (5) days after the expiration of the ninety-day period, then all
 22 dissenting stockholders who have failed to accept the offer of the state bank
 23 within the thirty-day period prescribed in subdivision (a)(4) of this section
 24 shall be bound by the terms of the plan of exchange.

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

30 (g) Within ten (10) days after the plan of exchange is consummated, the
 31 state bank shall give written notice thereof to each dissenting stockholder
 32 who is entitled to receive in cash the fair value of his shares.

33 (h) The plan of exchange shall provide for payment of or the manner of
 34 disposing of any shares of the state bank not taken by dissenting
 35 stockholders.

36

1 23-48-604. Effect of exchange.

2 (a)(1) When the plan of exchange of shares as filed with the
3 Commissioner and approved by the Commissioner under 23-48-602 becomes
4 effective in accordance with the terms of the plan, the exchange provided for
5 therein shall be deemed to have been consummated, and each shareholder of the
6 state bank acquired shall thereupon cease to be a shareholder of the state
7 bank.

8 (2) The ownership of all shares of the issued and outstanding stock of
9 the state bank, except shares payment of the value of which is required to be
10 made under 23-48-603, hereinafter sometimes referred to as _dissenting
11 shares_, shall automatically vest in the bank holding company, as the
12 acquiring person, without any physical transfer or deposit of certificates
13 representing the shares.

14 (3) All dissenting shares shall be considered authorized, but no longer
15 outstanding, shares of the state bank and may be disposed of in accordance
16 with the provisions of the plan of exchange or as otherwise approved by the
17 Commissioner.

18 (4) The bank holding company thereupon shall become the sole stockholder
19 of the state bank and shall be subject to all of the duties and liabilities,
20 to the extent provided by law, of a stockholder of a state bank organized
21 under the laws of this state.

22 (b)(1) Certificates representing shares of the state bank prior to the
23 plan of exchange becoming effective, except certificates representing
24 dissenting shares, shall, after the plan of exchange becomes effective,
25 represent:

26 (A) Shares of the capital stock or other securities of the bank
27 holding company to be issued in exchange for shares of the state bank; and

28 (B) The right, if any, to receive cash or other consideration upon
29 terms specified in the plan of exchange.

30 (2) However, the plan of exchange may specify that all such certificates
31 shall, after the plan of exchange becomes effective, represent only the right
32 to receive shares of stock or other securities issued by the bank holding
33 company, cash, or a combination thereof upon such terms as specified in the
34 plan of exchange.

35

36 23-48-605. State bank and holding company to remain separate --

1 Nonliability of directors, officers, etc.

2 The state bank acquired under a plan of exchange and the acquiring bank
3 holding company shall, in all respects, remain separate and distinct entities
4 with neither entity having any liability to the creditors or depositors, if
5 any, or the stockholders of the other, or for any acts or omissions of the
6 officers, directors, stockholders, or representatives of the other, other than
7 obligations which may be expressly provided for in the plan of exchange.

8

9

Subchapter 7 -- BRANCH OFFICES

10

11 23-48-701. Definitions.

12 As used in this part, unless the context otherwise requires:

13 (1) Full service branch means a banking facility separate from the
14 main office of the bank at which all lawful banking activities may be
15 conducted as fully as in the main office;

16 (2) Supervisory banking authority means the Commissioner for state
17 banks and the United States Comptroller of the Currency for national banks.

18

19 23-48-702. Establishment of full service branch offices -- Locations.

20 (a) No bank shall engage in the business of banking at any location
21 other than at a main banking office or branch bank in this state except as
22 otherwise permitted by law.

23 (b) Any bank with its main office located within the state of Arkansas
24 may establish a full service branch provided that its supervisory banking
25 authority approves its application for the full service branch. Full service
26 branches may only be established as follows:

27 (1) A bank may establish full service branches anywhere within the
28 county in which the establishing bank's main banking office is located and
29 anywhere within any counties contiguous to the county in which the
30 establishing bank's main banking office is located;

31 (2) A bank which relocates its main banking office may continue to use
32 its former main banking office location as a full service branch so long as
33 the use as a banking facility is uninterrupted;

34 (3) After December 31, 1998, a bank with its main office located within
35 the state of Arkansas may locate one (1) or more full service branches
36 anywhere in this state.

1 (c) Without regard to the exceptions for location of a branch bank as
2 provided in this section, a bank may purchase the business and assets or
3 assume the liabilities of, or merge or consolidate with, another bank located
4 in any incorporated city or town within this state and operate the acquired
5 bank as a full service branch, provided that full service branches shall not
6 be established pursuant to purchase, merger, or consolidation with another
7 bank should either bank have a de novo charter.

8 (d) None of the provisions of this section which restrict the locations
9 in which branch banks may be established shall be effective in emergency
10 instances in which the purchase or assumption of the assets and liabilities of
11 a failed bank becomes necessary due to state or federal regulatory action.

12 (e) Any state bank may file an application with the Commissioner to
13 relocate any existing branch to another location then authorized by law. A
14 fee of not less than one thousand dollars (\$1,000) nor more than two thousand
15 five hundred dollars (\$2,500), as set by Department regulation, shall
16 accompany the application. The application shall contain such information
17 concerning the new location as the Commissioner may require by regulation.
18 The Commissioner shall approve such relocation unless it is determined the
19 relocation is not economically feasible or will not serve the public
20 convenience and necessity.

21

22 23-48-703. Establishment of full service branch offices -- Procedure.

23 (a) The Commissioner shall have the authority to approve the application
24 of a state bank to establish a full service branch, if he shall find upon
25 investigation that the establishment of the branch is economically feasible
26 and will serve the public convenience and necessity.

27 (b) The Commissioner shall require the sponsor of a branch bank
28 application to pay a filing fee of not less than two thousand dollars (\$2,000)
29 nor more than five thousand dollars (\$5,000) as may be set by Department
30 regulations.

31 (c) Notice of the filing of the application shall be given by the
32 applicant state bank by registered or certified mail, return receipt
33 requested, to the main office of every other bank or branch of a bank in the
34 city or town in which the proposed branch bank is to be located. This notice
35 shall be given on or before the date the application is filed with the
36 Commissioner.

1 (d)(1) Any formal protest to a branch bank application must be received
2 in writing detailing the reasons for protest within fifteen (15) days of the
3 date the notice of an application was mailed.

4 (2) Each person that files formal written protest to a branch bank
5 application shall be required to pay a fee of not less than one thousand
6 dollars (\$1,000) nor more than three thousand dollars (\$3,000), as set by
7 Department regulations, which fee shall accompany the formal written protest
8 and must also be received by the Commissioner's office within fifteen (15)
9 days of the date the notice of an application was mailed.

10 (e) An adjudicatory or administrative hearing shall not be required on a
11 branch bank application.

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

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

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

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

23 (g) Following adoption of the Commissioner's official findings of fact,
24 conclusions of law, and order, an applicant or official protestant shall have
25 thirty (30) days in which to appeal the Commissioner's order to the
26 appropriate circuit court.

27

28 23-48-704. Pre-existing facilities.

29 Any bank may, at its option, operate any branch office, teller's window,
30 or other banking facility which is separate from the main office of the bank
31 and in operation on June 30, 1988, as a full service branch or a customer-bank
32 communications terminal.

33

34 23-48-705. Notice of termination of full service branch.

35 When a full service branch has once been established under any provision
36 of this subchapter or any prior act, the operation thereof shall not be

1 discontinued or the facility closed unless ninety (90) days prior notice of
2 intention to terminate the operation is given in writing to the supervisory
3 banking authority.

4

5 Subchapter 8 -- CUSTOMER-BANK COMMUNICATION TERMINALS

6

7 23-48-801. Definitions.

8 As used in this part, unless the context otherwise requires:

9 (1) Customer-bank communication terminal, or CBCT, means any
10 electronic device or facility, other than a point of sale terminal, together
11 with all associated equipment, structures, and systems, through or by means of
12 which a customer and a bank may engage in any banking transaction, whether
13 transmitted to the banking institution instantaneously or otherwise. This
14 definition specifically includes automatic teller machines.

15 (A) Banking transactions include, without limitation, the receipt of
16 deposits of every kind, the receipt and dispensing of cash, requests to
17 withdraw money from an account or pursuant to an authorized line of credit,
18 receiving payments payable at the bank or otherwise, and transmitting
19 instructions to receive, transfer, or pay funds for a customer's benefit.

20 (B) However, nothing in this subdivision (1) shall be deemed to apply to
21 devices used by banks to effect transactions of any nature with other banks;

22 (2) Point-of-sale terminal means electronic or mechanical equipment
23 located in nonbank business outlets to record or execute, directly with a
24 bank, transactions occurring as a result of the sale of goods or services,
25 provided such equipment neither dispenses cash nor accepts deposits. For
26 purposes of this definition, the crediting of an account for merchandise
27 returned or for services previously provided shall not be considered as an
28 acceptance of a deposit;

29 (3) Supervisory banking authority means the Commissioner and the
30 Banking Board for state banks and the United States Comptroller of the
31 Currency for national banks.

32

33 23-48-802. Location of CBCTs.

34 A bank, individually or jointly with one (1) or more other banks in the
35 state, may establish, maintain, and use one (1) or more customer-bank
36 communication terminals in the bank's main office or branches, or both, and

1 also in any location that the bank could otherwise be permitted to locate a
 2 full service branch.

3

4 23-48-803. Notice of establishment of terminal.

5 (a) As to any and each CBCT which a state bank proposes to establish or
 6 use, the state bank shall give not less than thirty (30) days written notice
 7 to the Commissioner of its intention to establish or use the terminal. The
 8 notice shall be in such form as the Commissioner may require and shall include
 9 the following information:

10 (1) The location and a general description of the surrounding
 11 area, including a description of any business establishment in or on which the
 12 terminal will be located;

13 (2) The name of the manufacturer, owner, lessor, and lessee;

14 (3) The manner of operation, including whether the device is on-
 15 line, whether the device will be manned and, if so, by whose employee, and the
 16 kinds of transactions which will be performed;

17 (4) Whether the device will be shared and, if so, with what other
 18 banks and their locations;

19 (5) Compliance as to local bank participation under 23-48-802 must
 20 be shown, where applicable; and

21 (6) Such other relevant information as the Commissioner may
 22 require.

23 (b) No notice need be given for any device or machine which:

24 (1) Is used solely to verify a customer's credit for purposes of
 25 check cashing or of a credit card transaction; or

26 (2) Is a part of a bank's authorized main office or branch.

27 (c) No hearing or permit shall be required to establish or use a CBCT.

28

29 23-48-804. Out-of-state banks.

30 No bank organized under the laws of, or having its main banking office
 31 in, any other state may establish, maintain, or operate a customer-bank
 32 communications terminal in this state. However, nothing in this section shall
 33 prohibit any Federal Reserve Bank or branch thereof from operating any
 34 electronic funds transfer system in this state.

35

36 23-48-805. Point-of-sale terminals not subject to regulation by the

1 Commissioner.

2 A point of sale terminal, as defined in this part, shall not be subject
3 to the regulation or supervision of the Commissioner.

4

5 23-48-806. Interconnected terminals.

6 (a) Any bank, pursuant to the provisions of this part, may be
7 interconnected with one (1) or more CBCTs, including out-of-state CBCTs,
8 subject to the limitations contained in subsection (b) of this section,
9 established by one (1) or more other banks, whether or not such CBCTs shall be
10 in locations where their establishment is permitted pursuant to 23-48-802, in
11 order to permit the transaction of any banking function authorized under this
12 part, between one (1) of the banks and its customers at any of the
13 interconnected CBCTs.

14 (b) Any CBCT established pursuant to the provisions of this subchapter
15 may be interconnected with one (1) or more out-of-state electronic funds
16 transfer systems or computer systems. However, nothing in this subsection
17 shall be construed as permitting a bank whose main office is located outside
18 of this state to conduct banking business in this state.

19

20 23-48-807. Persons attending terminals -- Verification of transactions.

21 (a) Except for CBCTs located on the premises of the main office or a
22 branch of a bank, a CBCT shall be unattended or attended by persons not
23 employed by the bank utilizing such CBCT. However, employees or agents of
24 the bank or its agents may install, maintain, repair, and service such
25 terminal and, for a reasonable period of time after the opening of any such
26 terminal, may provide an employee to instruct and assist customers in the
27 operation of the terminal.

28 (b) All transactions initiated through a CBCT shall be subject to
29 verification by the bank, either by direct wire transmission or otherwise.

30

31 23-48-808. Privacy of account information.

32 A bank using CBCTs shall establish and maintain reasonable safeguards
33 designed to protect the privacy and confidentiality of account information.

34

35 23-48-809. Approval for expanded powers of state banks.

36 At such time as national banks having their main offices in this state

1 are permitted to establish and use CBCTs in places or for transactions not
 2 permitted under this part, all state banks shall have the powers permitted
 3 national banks with respect to the establishment and use of CBCTs, provided
 4 that the Commissioner authorizes such use.

5

6 23-48-810. Sharing of communication terminals.

7 (a) (1) An agreement to share a customer-bank communication terminal,
 8 as defined by 23-48-801, shall not prohibit, limit, or restrict the right of a
 9 bank from charging a customer-bank communication terminal usage fee.

10 (2) The usage fee shall not exceed two dollars (\$2.00) or two percent
 11 (2%) of the gross amount of the transaction, whichever is less, and may only
 12 be imposed if imposition of the fee is disclosed at a time and in a manner
 13 that allows a user to terminate or cancel the transaction without incurring
 14 the usage fee.

15 (b)(1) For purposes of this section, _usage fee_ is a fee charged by a
 16 customer-bank communication terminal owner on transactions by a holder of a
 17 foreign bank card.

18 (2) For purposes of this section, a _foreign bank card_ is a card
 19 eligible for use in a customer-bank communication terminal, which card is not
 20 issued by the customer-bank communication terminal owner.

21

22

Chapter 49

23

DISSOLUTION AND LIQUIDATION

24

25 23-49-101. Definitions.

26 As used in this Chapter:

27 (1) _Chancery Court_ means the court that the Department has filed the
 28 notice of possession with, under this Chapter. The Chancery Court will make a
 29 determination for sale of assets only and not a determination of whether or
 30 not to take charge of an institution under the Commissioner's supervision;

31 (2) _Federal deposit insurance agency_ means an agency or
 32 instrumentality of the United States that insures to any extent the deposits
 33 of a depository institution, including the Federal Deposit Insurance
 34 Corporation (_FDIC_);

35 (3) _Insolvent institution_ means a state bank or subsidiary trust
 36 company that:

1 (A) Is, in the opinion of the Commissioner, incapable of or
2 unlikely to meet the demands of creditors or depositors on a timely basis;

3 (B) Has liabilities in excess of the total value of its assets as
4 determined by the Commissioner; or

5 (C) Has been advised by the FDIC of the FDIC's intention to
6 withdraw deposit insurance coverage;

7 (4) Institution means a state bank or subsidiary trust company.

8

9 23-49-102. Department taking possession -- Procedure.

10 (a) In addition to the powers conferred upon the Commissioner and the
11 Department, the Commissioner may take possession of the business and property
12 of any institution which the Commissioner supervises whenever it appears to
13 the Commissioner that the institution:

14 (1) Is insolvent or in imminent danger of insolvency;

15 (2) Is in an unsafe or unsound condition;

16 (3) Has refused to pay its deposits or obligations in accordance
17 with the terms under which those deposits or obligations were incurred;

18 (4) Has concealed or refused to submit books, papers, records, or
19 affairs of the institution for inspection to any examiner or to any lawful
20 agent of the appropriate federal financial institution regulatory agency or of
21 the Department;

22 (5) Has substantially dissipated assets or earnings due to:

23 (A) any violation of any law or regulation; or

24 (B) an unsafe or unsound practice;

25 (6) Has requested through its board of directors that the
26 Department take possession for the benefit of depositors, other creditors,
27 shareholders, or other persons;

28 (7) Has an impairment of its capital as is currently required to
29 be maintained by the Department;

30 (8) Has neglected or refused, for a period of at least thirty (30)
31 days, to comply with the terms of a final order of the Department or final
32 order of a federal financial institutions regulatory agency, essential to
33 preserve the solvency of the institution;

34 (9) Has failed to pay the fees charged by the Department under 23-
35 46-509 after due notice of the amount of the fee has been given.

36 (b) Whenever it appears to the Department that any one (1) or more of

1 the conditions in subsection (a) exists as to any institution, the Department
 2 shall cause a certified notice to be served on the president or other
 3 executive officer actively in charge of the institution and demand possession
 4 of the business, property, and records of the institution from the officer
 5 citing the reasons for such demand from subsection (a) of this section. The
 6 institution shall immediately surrender the possession to the Commissioner.

7

8 23-49-103. Injunction against Commissioner.

9 (a) Whenever any institution of whose business, property and records the
 10 Commissioner has taken possession deems itself aggrieved thereby, it may, at
 11 any time within ten (10) days after taking of possession, apply to the
 12 Chancery Court to enjoin further proceedings.

13 (b) After notifying the Commissioner to show cause why further
 14 proceedings should not be enjoined and after hearing the allegations and proof
 15 of the parties and determining the facts, the court may, upon the merits,
 16 dismiss the application or enjoin the Commissioner from further proceedings
 17 and direct him to surrender the business, property, and records to the
 18 institution.

19

20 23-49-104. When possession terminates.

21 When the Commissioner has taken possession of the business and property
 22 of an institution under the provisions of 23-49-102, the Commissioner shall
 23 hold possession of the business and property until the affairs of the
 24 institution have been finally liquidated as provided in this Chapter, unless
 25 the institution has undertaken the voluntary liquidation of its affairs under
 26 this Chapter or the Federal Deposit Insurance Corporation has been appointed
 27 receiver.

28

29 23-49-105. Notice of possession.

30 (a) Immediately upon taking possession of the business and property of
 31 any institution under 23-49-102, the Commissioner shall give notice by:

32 (1) Causing the notice to be served upon the president or other
 33 executive officer actively in charge of the business of the institution;

34 (2) Posting the notice at the main entrance at each office of the
 35 institution;

36 (3) Filing the notice in the office of the Chancery Court in the county

1 where the main office of the institution is located;

2 (4) Causing the notice to be mailed to all correspondent banks of the
 3 institution; however, if the Commissioner fails to provide such notice, the
 4 Commissioner shall incur no liability thereon; and

5 (5) Causing the notice to be published by one (1) insertion in a
 6 newspaper published in the City of Little Rock and having a general and
 7 substantially statewide circulation.

8 (b) Upon the filing of the notice under subsection (a), the clerk shall:

9 (1) Note the filing of the notice upon the records of the court; and

10 (2) Enter the cause as an action upon the dockets of the court under the
 11 name and style of _In the matter of the liquidation of _____ (inserting the
 12 name of the institution).

13 (c) The court shall not have authority to review the action of the
 14 Commissioner in taking possession of the institution's business, property, and
 15 records; however, the court may hear and determine all issues and matters
 16 pertaining to or connected with the liquidation of the institution, including:

17 (1) The sale of assets or assumption of liabilities of the institution;
 18 and

19 (2) The amount of the compensation and necessary expenses of any special
 20 representative, assistant, accountant, agent, or attorney employed by the
 21 Commissioner, or the receiver appointed by the Commissioner, as set forth in
 22 this Chapter.

23 (d) All entries, orders, judgments, and decrees of the court in
 24 connection with the liquidation proceedings shall be filed and entered of
 25 record in the cause of action.

26 (e) The rights and liabilities of an institution and of its creditors,
 27 depositors, shareholders, and all other persons interested in its estate
 28 shall, unless otherwise directed by the court, be fixed as of the date of the
 29 delivery of the notice of possession to the president or other executive
 30 officer actively in charge of the business of the institution. In the case of
 31 mutual debts or mutual credits of equal priority between the institution and
 32 another person, the credits and debts shall be set off and the balance only
 33 shall be allowed or paid. The right to setoff shall be determined as of the
 34 date of delivery of the notice of possession of the institution to the
 35 president or other executive officer actively in charge of the business of the
 36 institution.

1

2 23-49-106. Appointment of receiver -- Restrictions on proceedings,
3 liens or credits.

4 (a) The Commissioner may appoint the appropriate federal deposit
5 insurance agency as the receiver of the closed institution. If the federal
6 deposit insurance agency accepts the appointment, the Commissioner shall file
7 notice with the court of the appointment. If the Federal Deposit Insurance
8 Corporation accepts appointment as receiver, it shall not be required to post
9 any bond.

10 (b) Upon appointment as receiver, title to all assets of the institution
11 vests in the receiver without the execution of any instruments of conveyance,
12 assignment, transfer, or endorsement. If no other receiver is appointed as
13 provided in this chapter, the Commissioner shall act as receiver and have all
14 of the powers and duties of a receiver as provided in this Chapter.

15 (c) Except as otherwise provided, the sole and exclusive right to
16 liquidate and terminate the affairs of any institution is vested in the
17 receiver appointed under this section, and no other receiver, assignee,
18 trustee, or liquidating agent shall be appointed by any court or any other
19 person.

20 (d) After the Commissioner has taken possession of the business and
21 property of any institution, no suit, action, or other proceeding at law or in
22 equity shall be commenced or prosecuted against the institution upon any debt,
23 obligation, claim, or demand. All such claims may be brought against the
24 receiver.

25 (e) No person holding any of the property or credits of the institution
26 shall have any lien or charge against the property or credits for any payment,
27 advance, or clearance made after the Commissioner has taken possession. A
28 lien shall not attach to any of the assets or property of the institution by
29 reason of the entry of any judgment recovered against the institution after
30 the Commissioner has taken possession of its business and property.

31

32 23-49-107. Powers of receiver.

33 The receiver of a closed institution may do the following:

34 (1) Take possession of all books, records, and assets of the
35 institution;

36 (2) Collect all debts, claims, and judgments belonging to the

1 institution and do such other acts as are necessary to preserve and liquidate
2 its assets;

3 (3) Execute in the name of the institution any instrument necessary or
4 proper to effectuate its powers or perform its duties as receiver;

5 (4) Initiate, pursue, and defend litigation involving any right, claim,
6 interest, or liability of the institution;

7 (5) Exercise any and all existing fiduciary functions of the institution
8 as of the date of appointment as receiver;

9 (6) Borrow money as necessary in the liquidation of the institution and
10 secure the borrowings by the pledge or mortgage of assets. The repayment of
11 money borrowed under this subsection and interest thereon shall be considered
12 an expense of administration under 23-49-111;

13 (7) Abandon or convey title to any holder of a mortgage, deed of trust,
14 security interest, or lien against property in which the institution has an
15 interest whenever the receiver determines that to continue to claim such
16 interest is burdensome and of no advantage to the institution, its depositors,
17 creditors, or shareholders;

18 (8) Repudiate any leases or executory contracts to which the institution
19 is a party in accordance with 23-49-112;

20 (9) Subject to the approval of the court:

21 (A) Sell any and all real and personal property to compromise any
22 debt, claim, or judgment due from the institution and discontinue any action
23 or other proceedings pending;

24 (B) Pay off all mortgages, deeds of trust, security agreements,
25 and liens upon any real or personal property belonging to the institution and
26 purchase at judicial sale or at sale authorized by court order, any real or
27 personal property in order to protect the institution's equity in that
28 property;

29 (C) Sell in bulk the assets and liabilities of the institution.
30

31 23-49-108. Sale of Assets - Assumption of deposit liabilities by new
32 institution.

33 The receiver may, with ex parte approval of the chancery court, sell all
34 or any part of the institution's assets to one or more other state or
35 federally chartered depository institution or to a federal deposit insurance
36 agency in its corporate capacity. The receiver may also borrow from a federal

1 deposit insurance agency any amount necessary to facilitate the assumption of
2 deposit liabilities by a newly chartered or existing state or federally
3 chartered depository institution, assigning any part or all of the assets of
4 the institution as security for the loan.

5

6 23-49-109. Presentation of claims - Notice of claims procedure -
7 Rejection of claims - Statute of limitations.

8 (a) All parties having claims against the closed institution shall
9 present their claims supported by proof to the receiver within one hundred
10 eighty (180) days after the Commissioner has taken possession.

11 (b) The receiver shall cause notice of the claims procedures prescribed
12 by this section to be:

13 (1) Published once a month for three (3) consecutive months in a
14 newspaper published in the City of Little Rock and having a general and
15 substantially statewide circulation; and

16 (2) Mailed to each person whose name appears as a creditor upon books
17 of the institution at the person's last address of record.

18 (c) Within one hundred eighty (180) days following receipt of claim,
19 the receiver shall notify in writing any claimant whose claim has been
20 rejected. Notice is effective when mailed. Any claimant whose claim has been
21 rejected by the receiver may petition the chancery court for a hearing on the
22 claim within sixty (60) days from the date the claim was rejected.

23 (d) The period described in subsection (a) of this section may be
24 extended by written agreement between the claimant and the receiver.

25 (e) (1) The claim of any party against the closed institution shall be
26 disallowed (other than any portion of such claim which was allowed by the
27 receiver) as of the end of the sixty (60) day period described in subsection
28 (c) hereof, if the party having such claim fails to:

29 (A) Request an administrative review of any claim by the receiver
30 in accordance with proper procedure; or

31 (B) File suit on such claim (or continue an action commenced
32 before the appointment of the receiver) before the end of said sixty (60) day
33 period.

34 (2) Such disallowance shall be final and the claimant shall have no
35 further rights or remedies with respect to such claim.

36

1 23-49-110. Claims filed after 180 day claim period.

2 Any claims filed after the one hundred eighty (180) day claim period
3 prescribed by 23-49-109 and subsequently accepted by the receiver or allowed
4 by the chancery court shall be entitled to share in the distribution of assets
5 only to the extent of the undistributed assets in the hands of the receiver on
6 the date the claims are accepted or allowed.

7

8 23-49-111. Payment of claims.

9 (a) All claims against the institution's estate, proved to the
10 receiver's satisfaction or approved by the chancery court, shall be paid in
11 the following order:

12 (1) Administration expenses;

13 (2) Claims given priority under other provisions of state or federal
14 law;

15 (3) Deposit obligations;

16 (4) Other general liabilities;

17 (5) Debt subordinated to the claims of depositors and general
18 creditors;

19 (6) Equity capital securities.

20 (b) Administrative expenses shall include:

21 (1) Court costs;

22 (2) Compensation of each regular officer or employee of the receiver
23 for the time actually devoted by the officer or employee to the liquidation of
24 the institution at an amount not to exceed the compensation paid to the
25 officer or employee for the performance of his regular duties;

26 (3) Actual expenses of each regular officer and employee necessarily
27 incurred in the performance of his duties;

28 (4) Compensation and expenses of any special representative, assistant,
29 accountant, agent, or attorney employed by the receiver; and

30 (5) If the Commissioner is acting as receiver, such reasonable general
31 overhead expenses as may be incurred by the Commissioner in the liquidation of
32 the affairs of the institution, which shall be ascertained, determined, and
33 fixed by the Commissioner.

34 (c) Interest on any claims shall not be paid until all claims within the
35 same class have received the full principal amount of claim.

36

1 23-49-112. Rejection of contracts and leases.

2 (a) Within one hundred eighty (180) days after the date that the
3 Commissioner has taken possession, the receiver may, at his election, reject:

4 (1) Any executory contracts to which the closed institution is a party
5 without any further liability to the closed institution or the receiver; and

6 (2) Any obligation of the institution as a lessee of real or personal
7 property.

8 (b) The receiver's election to reject a lease shall create no claim for
9 rent other than rent accrued to the date of termination.

10

11 23-49-113. Subrogation of federal deposit insurance agency to rights of
12 depositors.

13 Whenever a federal deposit insurance agency pays or makes available for
14 payment the insured deposit liabilities of a closed institution, the federal
15 deposit insurance agency, whether or not it acts as receiver, shall be
16 subrogated by operation of law to all rights of depositors against the closed
17 institution relating to claims for deposits so paid by the federal deposit
18 insurance agency to the extent necessary to enable the federal deposit
19 insurance agency, under federal law, to make insurance payments available to
20 depositors of closed institutions.

21

22 23-49-114. Appointment of successor to fiduciary and representative
23 proceedings.

24 (a) The receiver, with the approval of the chancery court, may appoint
25 one or more successors to any or all of the rights, obligations, assets,
26 deposits, agreements, and trusts held by the closed institution as trustee,
27 administrator, executor, guardian, agent, and all other fiduciary or
28 representative capacities. Such approval may be obtained in connection with
29 the proceedings authorized under 23-49-108. A successor's duties and
30 obligations begin upon appointment to the same extent binding upon the closed
31 institution and as though the successor had originally assumed the duties and
32 obligations. Specifically, a successor shall be appointed to administer
33 trusteeships, administrations, executorships, guardianships, agencies, and
34 other fiduciary or representative proceedings to which the closed institution
35 is named or appointed in wills, whenever probated, or to which it is appointed
36 by any other instrument, court order, or by operation of law.

1 (b) This section shall not impair any right of the grantor or
2 beneficiaries of trust assets to secure the appointment of a substituted
3 trustee or manager.

4 (c) Within thirty (30) days after appointment, a successor shall give
5 written notice, insofar as practical, that the successor has been appointed in
6 accordance with applicable law to all interested parties named in:

- 7 (1) The books and records of the closed institution; and
- 8 (2) Trust documents held by it.

9

10 23-49-115. Notice concerning safekeeping and safe deposit boxes.

11 (a)(1) The receiver shall cause notice to be mailed to the last address
12 of record to the owners of any personal property in the possession of or held
13 by a closed institution for safekeeping, and to all lessees of safe deposit
14 boxes.

15 (2) The notice shall require the intended recipients to appear and
16 assert their claims to the property within sixty (60) days from the date of
17 the notice.

18 (b) Subject to approval of the chancery court, the receiver shall make
19 such agreements or arrangements as may be necessary for the disposition of
20 property held by the closed institution for safekeeping and the contents of
21 safe deposit boxes, and for the termination of any leases or other contracts
22 relating to such property or contents.

23

24 23-49-116. Actions for enforcement of rights, demands or claims vested
25 in an institution or its shareholders or creditors.

26 Notwithstanding any other provision of state law, the receiver may,
27 within five (5) years from the date of closing of the institution, institute
28 and maintain, in the name of the receiver, any action or proceeding for the
29 enforcement of any right, demand, or claim that is vested in the institution.

30

31 23-49-117. Contents of articles of dissolution.

32 When the proceedings described in this Chapter have been completed, the
33 receiver shall execute and file, in the manner provided in this section,
34 articles of dissolution, setting forth the following information:

- 35 (1) The name of the institution;
- 36 (2) The place where its main office was located;

1 (3) The names and addresses of the directors and officers of the
2 institution at the time the liquidation proceedings were begun;

3 (4) A brief summary of the aggregate amount of general claims finally
4 allowed against the institution, the order in which the claims were paid, and
5 the aggregate amount of all other claims against the institution. A statement
6 of the aggregate payments made on each of the groups of claims must be
7 provided, referencing the orders of the receiver or the chancery court
8 authorizing those payments and the current reports documenting such payments;

9 (5) A brief summary of the aggregate amount of payments made to the
10 shareholders of the institution, whether of money or other property, and a
11 reference to the orders of the receiver or the chancery court authorizing the
12 payments and to the current reports wherein documentation of the payments is
13 made.

14

15 23-49-118. Execution and filing of articles with Department -
16 Certificate of dissolution.

17 (a) The articles of dissolution shall be executed in duplicate and
18 presented in duplicate to the Department accompanied by fees prescribed by
19 Department regulations.

20 (b)(1) Upon presentation of the articles of dissolution, the
21 Commissioner shall endorse his approval upon each of the duplicate copies of
22 the articles if he finds that they conform to law.

23 (2) When all fees have been paid as required by law, the Commissioner
24 shall file one (1) copy of the articles in the Department and issue two (2)
25 certificates of dissolution. One (1) certificate of dissolution shall be
26 filed with the Department and the second shall be delivered to the receiver.

27 (c) Upon the issuance of the certificate of dissolution, the institution
28 shall be dissolved and its existence shall cease.

29 (d) Upon the issuance of the certificate of dissolution, the receiver
30 shall be authorized, as agent for the directors and shareholders of any
31 subsidiary trust company, to file any and all documents with the Secretary of
32 State necessary to terminate its corporate existence under applicable
33 corporate law.

34

35 23-49-119. Voluntary liquidation.

36 (a) An application for approval to voluntarily liquidate the affairs of

1 an institution shall be submitted to the Commissioner in such manner and form
 2 as the Commissioner may prescribe and shall include the information set forth
 3 in subsection (b) hereof, and contain such additional information which the
 4 Commissioner may require. The application shall include duplicate copies of a
 5 resolution authorizing the dissolution, and duplicate copies of a certificate,
 6 verified by the applicant's president, or a vice president, setting forth the
 7 facts pertaining to the resolution and also that all of the applicant's
 8 liabilities have been paid in full.

9 (b) Each duplicate certificate shall have annexed thereto, over the
 10 official signatures, evidence showing:

11 (1) The date on which the resolution was authorized by the affirmative
 12 vote of the holders of at least a simple majority of the outstanding shares
 13 entitled to vote thereon;

14 (2) The number of shares of each class entitled to vote on the
 15 resolution which were outstanding on the date of the stockholders' meeting;

16 (3) The number of shares of each class entitled to vote on the
 17 resolution whose owners were present in person or by proxy;

18 (4) The number of shares of each class voted for and against the
 19 resolution;

20 (5) The manner in which the meeting was called and the time and manner
 21 of giving notice, with a certification that the meeting was lawfully called
 22 and held.

23 (c) Upon receipt of the application, the Commissioner shall investigate
 24 its merits. If the Commissioner is satisfied that the application is complete
 25 and that all applicable provisions of law have been complied with, he shall
 26 cause an examination to be made of the applicant institution for the purpose
 27 of verifying the payment of all of its liabilities. If the examination
 28 satisfies the Commissioner that all of the applicant's liabilities have been
 29 paid, he shall endorse one (1) copy of the certificate with his statement that
 30 the institution is voluntarily liquidating.

31 (d) The return of the endorsed copy of the certificate shall operate to
 32 free the institution from further examination and to authorize it, under its
 33 original corporate name, to sue and be sued, to execute conveyances and other
 34 instruments, to take, hold, and own property, and to do all such other things
 35 as may be necessary to realize upon its remaining assets for the pro rata
 36 benefit of its stockholders, but not to engage or continue in any new or other

1 business under its charter or otherwise.

2 (e) The liquidation shall proceed as expeditiously as possible, and at
3 the conclusion thereof, the institution shall surrender its charter.

4 (f) In lieu of continuing the liquidation under the original corporate
5 name, the institution may transfer the remaining assets to a trustee agreed
6 upon by the stockholders by a majority vote and shall thereupon surrender its
7 charter.

8 (g) Each application for approval of a voluntary dissolution shall be
9 accompanied by a fee as shall be set by Department regulations and shall be
10 paid to the Department.

11

12 23-49-120. Voluntarily placing an institution in possession of
13 Commissioner.

14 (a) Any institution may place its affairs and assets under the control
15 of the Commissioner by posting a notice on its front door as follows: _This
16 financial institution is in the possession of the Arkansas State Bank
17 Commissioner._

18 (b) The posting of the notice or the taking possession of any
19 institution by the Commissioner shall be sufficient to place all of the assets
20 and property of whatever nature in the possession of the Commissioner and
21 shall operate as a bar to and dissolution of any attachment proceedings.

22

23

Chapter 50

24

MISCELLANEOUS VIOLATIONS OF BANKING LAWS

25

26 23-50-101. Prosecution of violations -- Nonliability of Commissioner.

27 (a) The Commissioner may initiate any appropriate civil or
28 administrative action or remedy upon discovering a violation of this act or
29 any other statute or regulation the enforcement of which is within the scope
30 of his duty.

31 (b) Civil, administrative or criminal actions initiated by the
32 Commissioner under this section which expose him or his estate to personal
33 liability for damages, or otherwise, shall be defended by the State of
34 Arkansas, and judgments, if any shall be obtained against him or his estate,
35 shall be borne by the State of Arkansas.

36 (c) No person shall be subjected to any civil or criminal liability for

1 any act or omission to act in good faith reliance upon an order or regulation
2 of the Department notwithstanding a subsequent decision by a court
3 invalidating the order or regulation.

4

5 23-50-102. Forfeiture of charter.

6 (a)(1) If the directors of any institution under the supervision of the
7 Department shall knowingly violate or knowingly permit any of its officers,
8 agents, or servants to violate any of the laws enacted for the regulation of
9 any such institutions or any Department regulations, all rights, privileges,
10 and franchises of the institution shall be subject to forfeiture.

11 (2) Any violation shall, however, be determined in the first instance by
12 the Commissioner, after notice to the institution of not less than five (5)
13 days, and after hearing thereon, and subject to appeal by the institution to
14 the chancery court of the county wherein the institution has its main office.
15 Any appeal shall be cognizable and subject to hearing by the chancery court,
16 either in term time or in vacation, at chambers, upon five (5) days' notice of
17 the taking of the appeal and of the time and place for the hearing.

18 (b)(1) Upon rendition of any decision adverse to any institution, the
19 Commissioner shall be authorized, in his discretion, to take charge of the
20 institution and manage and supervise the business thereof, pending any appeal
21 that may be taken from the decision or orders.

22 (2) Upon affirmance by the chancery court of the decision or orders
23 appealed from, the Commissioner shall be authorized to continue supervision,
24 or to suspend the charter, of the institution, pending compliance with the
25 decision or orders.

26 (3) If the decision or orders are not complied with (in the case of a
27 state bank or subsidiary trust company) within a reasonable time to be fixed
28 by the Commissioner, the Department shall proceed to liquidate the business
29 and assets of the state bank or subsidiary trust company in the same manner as
30 is provided in the case of insolvent state banks.

31

32 23-50-103. Misleading actions or use of words by unauthorized persons.

33 (a)(1) All persons, except those described in subdivision (a)(2) of
34 this section are prohibited from using in this state, as a portion of or in
35 connection with their place of business, their name or title, or in reference
36 to themselves in their stationery or advertising, the following words or

1 phrases, alone or in combination with any other word or phrase: _bank_,
2 _banker_, _bankers_, _banking_, _federal reserve_, _trust company_, _trust_,
3 _savings and loan_, _credit union_, or _building and loan_, or any other word
4 or phrase which tends to induce the belief that the party using it is
5 authorized to engage in the business of a bank, trust company, savings and
6 loan association, or credit union.

7 (2) The prohibitions contained in subsection (a)(1) hereof shall not
8 apply to those persons which discharge the burden of proving their authority
9 to use the words or phrases described in subsection (a)(1) hereof under the
10 laws of this or another state or of the United States

11 (b) All persons, except those described in subdivision (a)(2) of this
12 section, are prohibited from doing or soliciting business in this state
13 substantially in the manner, or so as to induce the belief, that the business,
14 in whole or in part, is that of a bank, savings bank, trust company, credit
15 union, or savings and loan association, either by the sale of contract, or of
16 shares of its capital stock upon partial or installment payments thereof, or
17 by the receipt of money, savings, dues, or other deposits, or by the issuance
18 of certificates of deposit or certificates of investment of money, savings or
19 dues.

20 (c) Nothing in this section shall be construed as preventing the use of
21 the word "bankers" in combination with other words in connection with the
22 place of business, name, and title of any finance or investment company
23 operated in connection with, as a subsidiary to, or having joint offices with,
24 a bank or trust company in this state, if the bank or trust company is subject
25 to the supervision of the Commissioner and if the bank or trust company has
26 the word "bankers" alone or in combination with other words in its name or
27 title.

28 (d) Each violation of subsection (a) of this section shall constitute a
29 felony which shall be punished by a fine of five hundred dollars (\$500) per
30 violation or by imprisonment not exceeding one (1) year, or by both fine and
31 imprisonment.

32 (e) It is declared to be public policy that this law be liberally
33 construed in favor of its enforcement.

34 (f) Nothing in this section shall be construed to authorize any person
35 to engage in any activity not otherwise authorized under Arkansas law.

36

1 23-50-104. Circulation of false rumor injurious to bank.

2 A person is guilty of a class A misdemeanor whenever he:

3 (1) Maliciously, and without cause, circulates or causes to be
4 circulated, either verbally or in writing, any rumor with the intent to
5 injuriously affect the financial standing or reputation of any bank doing
6 business in this state; or

7 (2) Makes any statement or circulates or assists in circulating any
8 false rumor for the purpose of injuring the financial standing of any bank; or

9 (3) Seeks either by word or action to start a run upon a bank or
10 connives or conspires with any parties for the purpose of injuring the
11 standing or reputation or starting a run on the bank.

12

13 23-50-105. Embezzlement, misuse of funds, etc., by officer, director,
14 etc.

15 (a) The following persons shall be guilty of a felony:

16 (1) Any officer, director, agent, or employee of any bank or subsidiary
17 trust company who:

18 (A) Embezzles or willfully misapplies any of the moneys, funds, or
19 credits of the bank or subsidiary trust company; or

20 (B) Without authority from the directors of the bank or subsidiary trust
21 company issues or puts forth any certificate of deposit; draws any order or
22 bill of exchange; makes any acceptance, or assigns any note, bond, draft, bill
23 of exchange, mortgage, judgment, or decree; or

24 (C) Makes any false entry in any book, report, or statement of the bank
25 or trust company with the intent in any case to injure or defraud the bank or
26 subsidiary trust company, or the Commissioner, or any agent or examiner
27 appointed to examine the affairs of the bank or subsidiary trust company, or
28 the Banking Board;

29 (2) Every receiver or liquidating agent of a bank or subsidiary trust
30 company who, with like intent to defraud or injure, shall embezzle or
31 willfully misapply any of the moneys, funds, or assets of his trust;

32 (3) Every agent, attorney, employee, or assistant of any receiver or
33 liquidating agent of any bank or subsidiary trust company who, with like
34 intent to defraud or injure, shall embezzle or willfully misapply any of the
35 moneys, funds, or assets of the trust of the receiver or liquidating agent;

36 and

1 (4) Every person who, with like intent, shall aid or abet any officer,
2 director, receiver, liquidating agent, employee, agent, attorney, or receiver
3 in any violation of this section.

4 (b) Upon conviction, the person shall be fined in any sum not more than
5 one million dollars (\$1,000,000) or shall be imprisoned in the Arkansas
6 penitentiary for not more than thirty (30) years, or both.

7

8 23-50-106. False statements or records -- Bribery of Commissioner,
9 examiner, or Department employee.

10 The following persons shall be guilty of a class D felony:

11 (1) Any person or persons who shall knowingly and willfully subscribe to
12 or make or cause to be made any false statement or false entry in the books of
13 any financial institution with the intent to deceive the Commissioner or
14 examiner; or

15 (2) Any person or persons who shall knowingly subscribe to or exhibit
16 false papers with the intent to deceive the Commissioner or the examiner; or

17 (3) Any person or persons who shall make or publish any false statement
18 concerning the assets, liabilities, or affairs of any financial institution;
19 or

20 (4) Any person or persons who shall bribe or attempt to bribe or offer
21 any gratuity to the Commissioner or any examiner.

22

23 23-50-107. False statements or records by officer, agent, or employee.

24 Every officer, agent, or employee of any financial institution organized
25 or doing business under the laws of the state who willfully and knowingly
26 subscribes to or makes any false reports or any false statements or entries in
27 the books of the financial institution or knowingly subscribes or exhibits any
28 false writing or paper with the intent to deceive any person as to the
29 condition of the financial institution is guilty of a class A misdemeanor.

30

31 23-50-108. False reports by Commissioner or examiner -- Acceptance of
32 bribe.

33 Any Commissioner or examiner who shall knowingly and willfully make a
34 false or fraudulent report of the condition of any financial institution with
35 the intent to aid or abet its officers, owners, or agents in continuing to
36 operate an insolvent institution or to injure the financial institution, or

1 any examiner who shall receive or accept any bribe or gratuity given for the
2 purpose of inducing him not to file a true and correct report of the condition
3 thereof or who shall neglect to make an examination thereof because of having
4 received a bribe or gratuity, is guilty of a class D felony.

5

6 23-50-109. Disclosure of information or false report by examiner.

7 Any examiner who shall disclose any information obtained by him in the
8 course of his employment, except to the Commissioner or the directors of the
9 financial institution, or when subpoenaed as a witness in a legal proceeding,
10 or who shall knowingly and willfully make, state, or publish any false
11 statement or report concerning the assets, liabilities, or affairs of the
12 financial institution, shall be immediately removed from office, shall be
13 liable under his official bond to the institution injured, and is guilty of a
14 class D felony.

15

16 23-50-110. Certification of check when funds insufficient.

17 (a) It shall be unlawful for any officer, director, agent, or employee
18 of any bank to certify any check drawn upon the bank unless the person drawing
19 the check has on deposit with the bank, at the time the check is certified, an
20 amount of money not less than the amount specified in the check.

21 (b) Any check so certified by a duly authorized officer, director,
22 agent, or employee shall be a good and valid obligation against the bank.

23 (c) However, any officer, director, agent, or employee of any bank who
24 shall willfully violate any provision of this section, or who shall resort to
25 any device or receive any fictitious obligation, directly or collaterally, in
26 order to evade the provisions thereof, or who shall certify a check before the
27 amount thereof shall have been regularly deposited in the bank to the credit
28 of the drawer thereof is guilty of a class A misdemeanor."

29

30 SECTION 2. Severability.

31 If any provision or clause of this act or application thereof to any
32 person or circumstance is held invalid, such invalidity shall not affect other
33 provisions or applications of this act which can be given effect without the
34 invalid provisions or application, and to this end the provisions of this act
35 are declared to be severable.

36

1 SECTION 3. Repealer.

2 (a) Chapters 30 - 34 of Title 23 of the Arkansas Code of 1987 are
 3 hereby repealed in their entirety.

4

5 (b) All other laws and parts of laws in conflict with this act are
 6 hereby repealed.

7

8 SECTION 4. All provisions of this act of a general and permanent nature
 9 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
 10 Revision Commission shall incorporate the same in the Code.

11

12 SECTION 5. EMERGENCY. It is hereby found and determined by the General
 13 Assembly that the Riegle-Neal Interstate Banking and Branching Efficiency Act
 14 of 1994 becomes effective on June 1, 1997 and that this act should become
 15 effective prior to the effective date of the Riegle-Neal Interstate Banking
 16 and Branching Efficiency Act of 1994. Therefore an emergency is declared to
 17 exist and this act being immediately necessary for the preservation of the
 18 public peace, health and safety shall be in full force and effect from and
 19 after May 31, 1997.

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