

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

A Bill

SENATE BILL 359

4
5 By: Senators Webb, Russ, and Harriman
6 By: Representatives Brown, Miller, Wilkinson, and McGee
7

For An Act To Be Entitled

8
9 "THE ARKANSAS INTERSTATE BANKING AND BRANCHING ACT."

Subtitle

10
11
12 "THE ARKANSAS INTERSTATE BANKING AND
13 BRANCHING ACT."
14

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

16 SECTION 1. Arkansas Code 23-45-102, added by the Arkansas Banking Code
17 of 1997, is amended to read as follows:

18 "23-45-102. Definitions.

19 (a) Subject to other definitions contained in subsequent sections of
20 this act, and unless the context otherwise requires, in this act:

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

24 (2) Arkansas bank means a bank whose home state is Arkansas;

25 ~~_____ (2) (3)~~ Arkansas bank holding company means a bank holding
26 company that controls one (1) or more state ~~bank banks~~. For purposes of this
27 definition, control has the meaning set forth in 12 U.S.C. 1841(a)(2);

28 ~~_____ (3) (4)~~ Arkansas Banking Code means The Arkansas Banking Code of
29 1997;

30 ~~_____ (4) (5)~~ Bank means a state ~~or a national~~ bank, or a national
31 bank or an out-of-state state-chartered bank which has received a certificate
32 of authority under 23-48-1001; provided that such term shall also include any
33 foreign bank organized under the laws of a territory of the United States,
34 Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which
35 are insured by the Federal Deposit Insurance Corporation;

36 ~~_____ (5) (6)~~ (A) Bank holding company means any company, foreign or

1 domestic, including a bank:

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

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

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

10 (B) Notwithstanding the foregoing:

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

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

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

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

24 ~~_____ (6) (8)~~ Bank premises includes the state bank's or subsidiary
25 trust company's main office site, all branch and other lawful office sites,
26 the main office building and all other branch and other lawful office
27 buildings, any or all of which may have additional space for occupancy by
28 tenants, and any parking areas or parking structures which constitute adjuncts
29 to any of the state bank or subsidiary trust company property;

30 (9) Bank supervisory agency means:

31 (A) Any agency of another state with primary responsibility
32 for chartering and supervising banks; and

33 (B) The Office of the Comptroller of the Currency, the
34 Federal Deposit Insurance Corporation, the Board of Governors of the Federal
35 Reserve System, and their successors;

36 ~~_____ (8) (10)~~ Capital base means the sum of capital, surplus, and

1 undivided profits, plus any additions and less any subtractions which the
2 Commissioner may by regulation prescribe;

3 ~~_____ (9)~~ (11) Capital development corporation means a corporation
4 authorized to be organized under the provisions of the Arkansas Capital
5 Development Corporation Act;

6 ~~_____ (10)~~ (12) Commissioner means the Bank Commissioner;

7 ~~_____ (11)~~ (13) Court means a court of competent jurisdiction;

8 ~~_____ (12)~~ (14) Day means a calendar day;

9 ~~_____ (13)~~ (15) Department means the State Bank Department of this
10 state;

11 ~~_____ (14)~~ (16) Department regulations or Department regulation means
12 regulations promulgated by the Commissioner with the approval of the Banking
13 Board;

14 ~~(16)~~ (17) Deposit and deposit account means the unpaid balance
15 of money or its equivalent received or held by a bank in the usual course of
16 its banking business and which represents a liability of the bank, for which
17 it 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 ~~_____ (15)~~ (18) De novo charter means a charter for a bank which has
26 been in existence for less than five (5) years, but it does not include a
27 charter which is issued in connection with the acquisition of assets or
28 liabilities from a predecessor financial institution. A bank resulting from
29 the conversion of a savings and loan association to a bank, from the
30 conversion of a state bank to a national bank, or from the conversion of a
31 national bank to a state bank shall be deemed to have been in existence, for
32 the purpose of determining whether it has a de novo charter, from the date the
33 converting institution came into existence;

34 ~~_____ (17)~~ (19) Depository institution means any bank, savings and
35 loan association, state or federal credit union, or any corporation that the
36 Commissioner determines to be operating in substantially the same manner as

1 such entities;

2 ~~_____ (18)~~ (20) Federal financial institutions regulatory agency means
3 the Federal Reserve System, including its Board of Governors, the Federal
4 Deposit Insurance Corporation, the Comptroller of the Currency, or the Office
5 of Thrift Supervision, or their successors;

6 ~~_____ (19)~~ (21) Financial institution means any state bank, registered
7 out-of-state bank, bank holding company, or subsidiary trust company;

8 (22) Home state means:

9 (A) With respect to a state-chartered bank, the state by
10 which the bank is chartered;

11 (B) With respect to a national bank, the state in which the
12 main office of the bank is located;

13 (C) With respect to a foreign bank, the state determined to
14 be the home state of such foreign bank under 12 U.S.C. 3103(c).

15 (23) Home state regulator means, with respect to an out-of-state
16 state-chartered bank, the bank supervisory agency of the state in which such
17 bank is chartered;

18 (24) Host state means a state, other than the home state of a
19 bank, in which the bank maintains, or seeks to establish and maintain a
20 branch;

21 (25) Interstate merger transaction means:

22 (A) The merger or consolidation of banks with different home
23 states, and the conversion of branches of any bank involved in the merger or
24 consolidation into branches of the resulting bank; or

25 (B) The purchase of all or substantially all of the assets
26 (including all or substantially all of the branches) and the assumption of all
27 or substantially all of the liabilities of a bank whose home state is
28 different from the home state of the acquiring bank, provided that the charter
29 of the bank selling its assets is surrendered as a part of the transaction;

30 ~~_____ (20)~~ (26) Main banking office or main office, with respect to a
31 bank, means the main banking office designated or provided for in the articles
32 of incorporation of a state bank, and the main office designated or provided
33 for in the articles of association of a national bank, at such identified
34 location as shall have been or as hereafter may be approved by the
35 Commissioner, in the case of a state bank, or by the appropriate federal
36 regulatory agency, in the case of a national bank;

1 (27) Merging bank means a bank which is a party to a merger or
 2 an interstate merger transaction and which is not the resulting bank;

3 ~~—————(21)~~ (28) National bank means a national banking association
 4 organized pursuant to 12 U.S.C. 21-215b;

5 ~~—————(22)~~ (29) National trust company means a company organized
 6 under the laws of the United States to conduct trust business and business
 7 incidental to trust business in this state, ~~having its main office in this~~
 8 ~~state,~~ or of which more than fifty percent (50%) of the voting stock is owned,
 9 directly or indirectly, by a bank holding company which also owns, directly or
 10 indirectly, an affiliated bank, as defined in subchapter 8 of Chapter 47 of
 11 this title;

12 ~~—————(23)~~ (30) Order means all, or any part, of the final
 13 disposition, whether affirmative, negative, injunctive or declaratory in form,
 14 by the Commissioner or the Banking Board, of any matter other than the making
 15 of regulations of general application;

16 (31) Out-of-state bank means a bank whose home state is any
 17 state other than Arkansas;

18 (32) Out-of-state state-chartered bank means any bank chartered
 19 under the laws of any state other than Arkansas;

20 ~~—————(24)~~ (33) Person means an individual, corporation, partnership,
 21 joint venture, trust, estate, limited liability company or other
 22 unincorporated association or any other legal or commercial entity;

23 ~~—————(25)~~ (34) Predecessor financial institution means a depository
 24 institution whose charter ceased to exist in connection with the purchase of
 25 its assets or the assumption of its liabilities by a successor bank;

26 (35) Registered out-of-state bank means an out-of-state bank
 27 which has a certificate of authority pursuant to the terms of Subchapter 10,
 28 Chapter 48, Title 23 of Arkansas Code Annotated (23-48-1001 et seq.);

29 (36) Resulting bank means the bank resulting from a merger or
 30 conversion, or the bank purchasing over fifty percent (50%) of the assets or
 31 assuming over fifty percent (50%) of the liabilities of another depository
 32 institution in a purchase or assumption transaction or an interstate merger
 33 transaction;

34 ~~—————(26)~~ (37) Safe deposit box means a safe, box or other receptacle
 35 for the safekeeping of property, which is located on a bank's premises and
 36 leased by the bank to a lessee;

1 ~~_____ (27)~~ (38) Savings and loan association means a corporation
 2 carrying on the business of a savings and loan association or a building and
 3 loan association under a charter issued by this state, or any federal savings
 4 association or federal savings bank which is chartered under federal law;

5 ~~_____ (28)~~ (39) State bank means: (a) a corporation created pursuant
 6 to either Act 113 of the Arkansas General Assembly of 1913 or Act 179 of the
 7 Arkansas General Assembly of 1969 (or pursuant to any predecessor or successor
 8 act or acts of either of the foregoing) and existing and authorized under the
 9 laws of this state on May 30, 1997, to engage in a general commercial banking
 10 business; and (b) a corporation organized under the provisions of this act and
 11 authorized thereunder to engage in a general commercial banking business;

12 ~~_____ (29)~~ (40) Subsidiary trust company means a corporation organized
 13 under the Arkansas Business Corporation Act, 4-27-101, et seq. and authorized
 14 by the Commissioner pursuant to subchapter 8 of Chapter 47 of this title or
 15 the Bank Holding Company Subsidiary Trust Company Formation Act of 1989 to
 16 conduct trust business and business incidental to trust business, ~~having its~~
 17 ~~main office~~ in this state, of which more than fifty percent (50%) of the
 18 voting stock is owned, directly or indirectly, by a bank holding company which
 19 also owns, directly or indirectly, an affiliated bank, as that term is defined
 20 in said subchapter 8 of Chapter 47 of this title.

21 (b) For the purposes of defining, home state, host state, home state
 22 regulator, out-of-state bank and out-of-state state-chartered bank, the term
 23 state means any state of the United States, the District of Columbia, any
 24 territory of the United States, Puerto Rico, Guam, American Samoa, the Trust
 25 Territory of the Pacific Islands, the Virgin Islands, and the Northern
 26 Marianas Islands."

27

28 SECTION 2. Arkansas Code 23-45-104(a)(1), added by the Arkansas Banking
 29 Code of 1997, is amended to read as follows:

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

34

35

36 SECTION 3. Arkansas Code 23-46-207, added by the Arkansas Banking Code

1 of 1997, is amended to read as follows:

2 "23-46-207. Interests in ~~state banks~~ financial institutions 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, registered out-of-state bank or bank holding company
8 which ~~owns or~~ controls a state bank ~~subsidiary~~ or a registered out-of-state
9 bank, or receive, directly or indirectly, any payment or gratuity from any
10 such organizations. A person subject to this section may not borrow money
11 from a state bank or registered out-of-state bank which is an out-of-state
12 state-chartered bank except as provided in subsection (b) hereof.

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

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

18 (2) Purchase banking services, other than credit services, under
19 rates and terms generally available to other customers of the financial
20 institution."
21

22 SECTION 4. Arkansas Code 23-46-304(a), added by the Arkansas Banking
23 Code of 1997, is amended to read as follows:

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

26 (1) Approve or disapprove all applications for charters for new
27 state banks, except applications for new state bank charters in connection
28 with failed institutions as provided in 23-48-511;

29 (2) Approve or disapprove all applications for the merger or
30 consolidation of one (1) or more banks ~~or one (1) or more~~ , out-of-state
31 banks, or savings and loan associations into a state bank;

32 (3) Approve or disapprove all applications for the purchase by
33 one state bank of over fifty percent (50%) of the assets of another depository
34 institution, and all applications for the assumption by one state bank of over
35 fifty percent (50%) of the liabilities of another depository institution;

36 (4) Approve or disapprove all applications by a savings and loan

1 association to convert to a state bank;

2 (5) Approve or disapprove all applications for amendments to the
3 articles of incorporation of an existing state bank;

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

6 (7) Approve or disapprove all rules and regulations promulgated
7 by the Commissioner;

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

14 (9) Subpoena witnesses; and

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

17

18 SECTION 5. Arkansas Code 23-46-401, added by the Arkansas Banking Code
19 of 1997, is amended to read as follows:

20 "23-46-401. Applicability.

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

22 (1) A merger under which a state bank merges into a national bank
23 which is an Arkansas bank; or

24 (2) Any consolidation proceeding under which a state bank becomes
25 consolidated into a national bank which is an Arkansas bank; or

26 (3) Any proceeding under which a state bank is converted into a
27 national bank or a national bank is converted into a state bank."

28

29 SECTION 6. Arkansas Code 23-47-710, added by the Arkansas Banking Code
30 of 1997, is amended to read as follows:

31 "23-47-710. Services provided by affiliates.

32 Any ~~state bank, national bank,~~ subsidiary trust company or national
33 trust company qualified to act as a fiduciary in this state, is hereby
34 specifically authorized to utilize its respective affiliates to provide
35 services for any trust or estate for which the bank, subsidiary trust company
36 or national trust company acts as a trustee or other fiduciary, provided the

1 bank, subsidiary trust company or national trust company believes, in the
 2 exercise of the standard of care described in 28-71-105, that the services are
 3 reasonably necessary and that its affiliate can render such services,
 4 including, but not limited to, securities brokerage services, computer
 5 services, and banking services, to the trust or estate as competently as
 6 similar services rendered by nonaffiliates and for compensation equal to or
 7 less than that charged by nonaffiliates. Provided the foregoing requirements
 8 are met, an affiliate may be utilized by the bank, subsidiary trust company or
 9 national trust company without the approval or consent of any person or
 10 specific authorization in the trust instrument, unless such power is expressly
 11 withheld in the trust instrument."

12

13 SECTION 7. Arkansas Code 23-47-801, added by the Arkansas Banking Code
 14 of 1997, is amended to read as follows:

15 "23-47-801. Definitions.

16 For purposes of this ~~part~~ subchapter, affiliated bank means a bank,
 17 ~~having its main office in this state,~~ having authority to conduct trust
 18 business and business incidental to trust business within this state, more
 19 than fifty percent (50%) of the voting stock of which is owned directly or
 20 indirectly by:

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

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

30

31 SECTION 8. Arkansas Code 23-47-901, added by the Arkansas Banking Code
 32 of 1997, is amended to read as follows:

33 "23-47-901. Safe deposit facilities -- Liability of lessor.

34 A ~~state~~ bank may lease safe deposit boxes for the keeping of property on
 35 such terms as may be agreed by the parties. No ~~state bank or national bank~~
 36 shall be liable for any loss of the property in a safe-deposit box by theft,

1 robbery, fire or other cause."

2

3 SECTION 9. Arkansas Code 23-48-309, added by the Arkansas Banking Code
4 of 1997, is amended to read as follows:

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

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

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

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

21 (1) The fictitious name under which business is being or will be
22 conducted by the applicant ~~corporation~~ entity;

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

25 (3) The ~~corporate~~ name, ~~state of incorporation,~~ home state, and
26 location (giving city and street address) of the registered office in ~~the~~ this
27 state of the applicant ~~corporation~~ entity.

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

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

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

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

24

25 SECTION 10. Arkansas Code 23-48-405, added by the Arkansas Banking Code
26 of 1997, is amended to read as follows:

27 "23-48-405. Ownership or control of subsidiaries.

28 It shall be unlawful for a bank holding company to directly or
29 indirectly own or control more than one (1) bank subsidiary if any such bank
30 subsidiary with its main office in Arkansas has a de novo charter."

31

32 SECTION 11. Arkansas Code 23-48-406(a), added by the Arkansas Banking
33 Code of 1997, is amended to read as follows:

34 "(a) A bank holding company is prohibited from acquiring ownership or
35 control of the stock or the assets of any bank that has its main office or any
36 branch office in Arkansas, if, after giving effect to the acquisition of the

1 stock or the assets of that bank, the acquiring bank holding company would own
 2 or control, directly or indirectly, banks having in the aggregate more than
 3 twenty-five percent (25%) of the total deposits ~~held by all banks having main~~
 4 ~~offices~~ within the ~~state~~ State of Arkansas held by banks."

5

6 SECTION 12. Arkansas Code 23-48-501, added by the Arkansas Banking Code
 7 of 1997, is amended to read as follows:

8 "23-48-501. Definitions.

9 As used in this ~~part~~ subchapter, unless the context otherwise requires:

10 (1) Converting bank means a state bank converting to a national bank, a
 11 national bank converting to a state bank, or a savings and loan association
 12 converting to a state bank;

13 (2) Dissenters' rights means the rights of dissenting stockholders
 14 specified in 23-48-506;

15 (3) Merger includes consolidation in all sections of this Subchapter
 16 except ~~§~~23-48-509;

17 ~~—— (4) Merging bank means a bank which is a party to a merger and which is~~
 18 ~~not the resulting bank;~~

19 ~~—— (5) (4) Purchase or assumption means the purchase by a state bank of~~
 20 ~~over fifty percent (50%) of the assets of another depository institution, or~~
 21 ~~the assumption by a state bank of over fifty percent (50%) of the liabilities~~
 22 ~~of another depository institution;~~

23 ~~—— (6) Resulting bank means the bank resulting from a merger of~~
 24 ~~conversion, or the bank purchasing over fifty percent (50%) of the assets or~~
 25 ~~assuming over fifty percent (50%) of the liabilities of another depository~~
 26 ~~institution in a purchase or assumption transaction;~~

27 ~~—— (7) (5) Wholly owned Arkansas bank holding company means a bank~~
 28 ~~holding company, as that term is defined in 23-45-102, incorporated under the~~
 29 ~~laws of the State of Arkansas, all of the outstanding shares of each class of~~
 30 ~~the capital stock of which is owned by a single individual or entity."~~

31

32 SECTION 13. Arkansas Code 23-48-502, added by the Arkansas Banking Code
 33 of 1997, is amended to read as follows:

34 "23-48-502. Merger or conversion of state bank into national bank.

35 (a) Subject to the provisions of this subchapter and provided that
 36 ~~parties~~ no Arkansas bank which is a party to a the merger has a de novo

1 charter, a state bank may merge into a national bank, including a national
 2 bank with a home state other than Arkansas.

3 (b) The action to be taken by a merging or converting state bank and its
 4 rights and liabilities and those of its shareholders shall be the same as
 5 those prescribed for national banks, at the time of the action, by the laws of
 6 the United States, and not by the law of this state, except that:

7 (1) The assenting vote of the holders of a simple majority of each
 8 class of voting stock of a state bank shall be required for the merger or
 9 conversion;

10 (2) Upon the merger of a state bank into a national bank, the
 11 stockholders of the state bank shall have dissenters' rights- ; and

12 (3) If the national bank is an out-of-state bank, then Subchapter
 13 9, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-901 et seq.) shall
 14 be applicable to the merger.

15 (c) No approval by the Commissioner or by any other state authority
 16 shall be necessary for a state bank to convert or merge into a resulting
 17 national bank as provided by federal law. However, within ten (10) days
 18 following the effective date of the merger or conversion, the resulting bank
 19 shall be required to file in the office of the Commissioner, a complete copy
 20 of the articles of merger or conversion. This copy must be certified by the
 21 president or a vice president of the resulting bank.

22 (d) Upon the completion of the merger or conversion, the charter of any
 23 merging or converting state bank shall automatically terminate."
 24

25 SECTION 14. Arkansas Code 23-48-503, added by the Arkansas Banking Code
 26 of 1997, is amended to read as follows:

27 "23-48-503. Merger of bank or savings and loan association into state
 28 bank.

29 (a) With the approval of the Commissioner and the Banking Board and
 30 after a public hearing as prescribed by the applicable law of this state, any
 31 bank (including an out-of-state bank upon compliance with Subchapter 9,
 32 Chapter 48, Title 23 of Arkansas Code Annotated) or savings and loan
 33 association may be merged with a state bank to result in a state bank,
 34 provided that, if any national bank, out-of-state bank or savings and loan
 35 association shall be involved in the merger, there shall be compliance with
 36 the requirements of the state or federal laws applicable to such national

1 bank, out-of-state bank or savings and loan association. A bank, including an
 2 out-of-state bank, or savings and loan association may merge into a state bank
 3 provided that none of the Arkansas banks which are the parties to the merger
 4 ~~do not have~~ has a de novo charter. The applicant shall file an application
 5 with the Commissioner containing such information as the Commissioner may
 6 require and if an out-of-state bank is a party to the merger all applicable
 7 provisions of Subchapter 9, Chapter 48, Title 23 of Arkansas Code Annotated
 8 (23-48-901 et seq.) and the applicable law of the home state of the merging
 9 bank shall be satisfied. The assenting vote of a simple majority of each
 10 class of voting stock of the merging ~~bank~~ banks and resulting bank shall be
 11 required for the merger, provided that no vote of the shareholders of the
 12 resulting bank shall be required if the number of shares to be issued in
 13 connection with the merger does not exceed twenty percent (20%) of the
 14 outstanding shares of the resulting bank prior to the merger.

15 (b) The Commissioner shall provide the Banking Board with the results of
 16 the investigation of the application.

17 (c) The Commissioner shall approve the application if, at the hearing,
 18 both the Commissioner and the Banking Board find that:

19 (1) The proposed merger provides adequate capital structure;

20 (2) The terms of the merger agreement are fair;

21 (3) The merger is not contrary to the public interest;

22 (4) The proposed merger adequately provides for dissenters'

23 rights; and

24 (5) The requirements of all applicable state and federal laws have
 25 been complied with."

26

27 SECTION 15. Arkansas Code 23-48-505 shall be renumbered as 23-48-512
 28 and the following Section shall be added as 23-48-505:

29 "23-48-505. Merger of state bank into an out-of-state state-chartered
 30 bank.

31 (a) Subject to the provisions of this subchapter and provided that no
 32 Arkansas bank which is a party to the merger has a de novo charter, a state
 33 bank may merge into an out-of-state bank.

34 (b) The action to be taken by a merging state bank and its rights and
 35 liabilities and those of its shareholders shall be the same as those
 36 prescribed for the out-of-state state-chartered banks, at the time of the

1 action, by the laws of the home state of the out-of-state state-chartered
 2 bank, and not by the law of this state, except that:

3 (1) The assenting vote of the holders of a simple majority of each
 4 class of voting stock of a state bank shall be required for the merger; and

5 (2) Upon the merger of a state bank into an out-of-state state-
 6 chartered bank, the stockholders of the state bank shall have dissenters'
 7 rights.

8 (c) The merger shall only be consummated after compliance with all
 9 applicable provisions of Subchapter 9, Chapter 4, Title 23 of Arkansas Code
 10 Annotated (23-48-901 et seq.).

11 (d) Upon the completion of the merger, the charter of any merging state
 12 bank shall automatically terminate."

13

14 SECTION 16. Arkansas Code 23-48-702, added by the Arkansas Banking Code
 15 of 1997, is amended to read as follows:

16 "23-48-702. Establishment of full service ~~branch~~ branches and limited
 17 purpose offices -- Locations.

18 (a) No bank shall engage in ~~the business of banking~~ core banking
 19 activities (receiving deposits, paying checks or lending money) in this state
 20 at any location other than at a main banking office or a full service branch
 21 bank in this state, except as otherwise permitted by law. Unless otherwise
 22 restricted by applicable law, banks may engage in permitted activities other
 23 than core banking activities at a main office, any branch or a limited purpose
 24 office.

25 (b) Any Arkansas bank ~~with its main office located within the state of~~
 26 ~~Arkansas~~ may establish a full service branch provided that its supervisory
 27 banking authority approves its application for the full service branch. Any
 28 registered out-of-state bank may establish a full service branch provided that
 29 the bank supervisory agencies with jurisdiction over such bank approve its
 30 application for a full service branch. Full service branches may only be
 31 established as follows:

32 (1) ~~A~~ An Arkansas bank may establish full service branches
 33 anywhere within the county in which the establishing bank's main banking
 34 office is located and anywhere within any counties contiguous to the county in
 35 which the establishing bank's main banking office is located;

36 (2) A state bank which relocates its main banking office may

1 continue to use its former main banking office location as a full service
2 branch so long as the use as a banking facility is uninterrupted;

3 (3) Following the consummation of any bank merger transaction
4 authorized under the Arkansas Banking Code, as amended, the resulting bank may
5 establish, acquire or operate additional branches at any location in the State
6 of Arkansas where any bank which was a party to the merger could have
7 established, acquired or operated a full service branch under applicable law
8 if such bank had not been a party to the merger transaction.

9 ~~_____ (3)~~ (4) After December 31, 1998, a bank with its main office
10 located within the ~~state~~ State of Arkansas or a registered out-of-state bank
11 may locate one (1) or more full service branches anywhere in this state.

12 (c) Without regard to the exceptions for location of a full service
13 branch ~~bank~~ as provided in this section, a bank may purchase the business and
14 assets or assume the liabilities of, ~~or merge or consolidate with, another an~~
15 Arkansas bank located in any incorporated city or town within this state and
16 operate the acquired bank as a full service branch, provided that full service
17 branches shall not be established ~~pursuant to purchase, merger, or~~
18 ~~consolidation with another bank should either bank have~~ if one or more of the
19 banks is an Arkansas bank which has a de novo charter.

20 (d) None of the provisions of this section which restrict the locations
21 in which ~~branch banks~~ full service branches may be established shall be
22 effective in emergency instances in which the purchase or assumption of the
23 assets and liabilities of a failed bank becomes necessary due to state or
24 federal regulatory action.

25 (e) Any state bank may file an application with the Commissioner to
26 relocate any existing full service branch to another location then authorized
27 by law. A fee of not less than one thousand dollars (\$1,000) nor more than
28 two thousand five hundred dollars (\$2,500), as set by Department regulation,
29 shall accompany the application. The application shall contain such
30 information concerning the new location as the Commissioner may require by
31 regulation. The Commissioner shall approve such relocation unless it is
32 determined the relocation is not economically feasible or will not serve the
33 public convenience and necessity.

34 (f) Any bank may establish a limited purpose office anywhere in the
35 state to conduct non-core banking activities upon satisfaction of the notice
36 requirement set forth in this subsection.

1 (1) As to each limited purpose office which a bank proposes to
 2 establish or use, the bank shall give not less than thirty (30) days* prior
 3 written notice of its intention to establish or use the limited purpose office
 4 to:

5 (A) the Commissioner, in the case of a state bank, or
 6 (B) the home state regulator, in the case of a registered
 7 out-of-state bank which is an out-of-state state-chartered bank, or
 8 (C) the Comptroller of the Currency, in the case of a
 9 national bank.

10 (2) The notice shall be in such form as may be required by the
 11 regulatory authority with which the notice is to be filed and shall include
 12 the following information:

13 (A) The location and a general description of the
 14 surrounding area;
 15 (B) Whether the location will be owned or leased;
 16 (C) The non-core banking activities to be conducted;
 17 (D) An estimate of the initial cost of the limited purpose
 18 office; and
 19 (E) Such other relevant information as may be required by
 20 the regulatory authority."

21

22 SECTION 17. Arkansas Code 23-48-802, added by the Arkansas Banking Code
 23 of 1997, is amended to read as follows:

24 "23-48-802. Location of CBCTs

25 A bank, individually or jointly with one (1) or more other banks in the
 26 state, may establish, maintain, and use one (1) or more customer-bank
 27 communication terminals ~~in the bank's main office or branches, or both, and~~
 28 ~~also in any location that the bank could otherwise be permitted to locate a~~
 29 ~~full service branch anywhere in this state, and in any location in any one or~~
 30 more other states if permitted by the applicable law of such other state."

31

32 SECTION 18. Arkansas Code 23-48-804, added by the Arkansas Banking Code
 33 of 1997, is amended to read as follows:

34 "23-48-804. Out-of-state banks.

35 ~~— No bank organized under the laws of, or having its main banking office~~
 36 ~~in, any other state may establish, maintain, or operate a customer bank~~

1 ~~communications terminal in this state. However, nothing~~ Any out-of-state bank
 2 may establish, maintain, and operate a customer-bank communications terminal
 3 anywhere in this state. Out-of-state state-chartered banks, other than
 4 registered out-of-state banks shall file the notice set forth in 23-48-803
 5 with the Commissioner. Registered out-of-state banks shall satisfy all filing
 6 requirements under the regulations of their home state regulator concerning
 7 the establishment, maintenance and operations of out-of-state CBCTs. Nothing
 8 in this section shall limit, restrict or prohibit any Federal Reserve Bank or
 9 branch thereof from operating any electronic funds transfer system in this
 10 state."

11

12 SECTION 19. Arkansas Code 23-48-806, added by the Arkansas Banking Code
 13 of 1997, is amended to read as follows:

14 "23-48-806. Interconnected terminals.

15 ~~—— (a) Any bank, pursuant to the provisions of this part, may be~~
 16 ~~interconnected with one (1) or more CBCTs, including out-of-state CBCTs,~~
 17 ~~subject to the limitations contained in subsection (b) of this section,~~
 18 ~~established by one (1) or more other banks, whether or not such CBCTs shall be~~
 19 ~~in locations where their establishment is permitted pursuant to 23-48-802, in~~
 20 ~~order to permit the transaction of any banking function authorized under this~~
 21 ~~part, between one (1) of the banks and its customers at any of the~~
 22 ~~interconnected CBCTs.~~

23 ~~—— (b) Any CBCT established pursuant to the provisions of this subchapter~~
 24 ~~may be interconnected with one (1) or more out-of-state electronic funds~~
 25 ~~transfer systems or computer systems. However, nothing in this subsection~~
 26 ~~shall be construed as permitting a bank whose main office is located outside~~
 27 ~~of this state to conduct banking business in this state. In order to permit~~
 28 the transaction of any banking function authorized under this subchapter,
 29 between a bank and its customers, any bank, pursuant to the provisions of this
 30 subchapter, may be interconnected with (i) one or more CBCTs, including out-
 31 of-state CBCTs, established by one or more other banks and (ii) one or more
 32 electronic funds transfer systems or computer systems, regardless of the
 33 location of the banks, CBCTs, electronic funds transfer systems or computer
 34 systems. However, nothing in this section shall be construed as permitting any
 35 out-of-state bank, other than a registered out-of-state bank, to conduct
 36 banking business in this state unless expressly permitted by the Arkansas

1 Banking Code."

2

3 SECTION 20. Chapter 48 of Title 23 of Arkansas Code is amended by
4 adding two additional subchapters to read as follows:

5 SUBCHAPTER 9

6 INTERSTATE BANK MERGERS AND BRANCHING

7 "23-48-901. Definitions

8 As used in this subchapter, unless the context otherwise requires:

9 (1) Acquisition of an interstate branch means the acquisition of a
10 branch located in a host state as the initial entry of an out-of-state bank
11 into the host state, without engaging in an interstate merger transaction as
12 defined in 23-45-102.

13 (2) Control shall be construed consistently with the provisions of 12
14 U.S.C. 1841(a)(2).

15 (3) De novo interstate branch means a bank branch located in a host
16 state which (i) is the initial entry of an out-of-state bank into the host
17 state, (ii) is originally established by the bank as a branch and (iii) does
18 not become a branch of the bank as a result of an interstate merger
19 transaction.

20 23-48-902. Authority of State Banks to Establish Interstate Branches by
21 Merger.

22 With the prior approval of the Banking Board and the Commissioner, a
23 state bank may establish, maintain and operate one or more branches in one or
24 more states other than Arkansas pursuant to an interstate merger transaction
25 in which the state bank is the resulting bank. Not later than the date on
26 which the required application for the interstate merger transaction is filed
27 with the responsible federal bank supervisory agency, the applicant state bank
28 shall file an application on a form prescribed by the Commissioner and pay the
29 fee prescribed by 23-46-404. The applicant shall also comply with the
30 applicable provisions of Subchapter 5, Chapter 48, Title 23 of Arkansas Code
31 Annotated (23-48-501 et seq.). If the Banking Board and Commissioner, after a
32 hearing, find that:

33 (1) The proposed merger provides adequate capital structure;

34 (2) The terms of the merger agreement are fair;

35 (3) The merger is not contrary to the public interest;

36 (4) The proposed merger adequately provides for dissenters' rights; and

1 (5) The requirements of all applicable state and federal laws have been
2 complied with, then the Banking Board and the Commissioner shall approve the
3 interstate merger transaction and the operation of branches outside of
4 Arkansas by the state bank. Such an interstate merger transaction may be
5 consummated only after the applicant has received the written approval of the
6 Banking Board and the Commissioner.

7 23-48-903. Interstate Merger Transactions and Branching Permitted.

8 One or more Arkansas banks, provided no such Arkansas bank has a de novo
9 charter, may enter into an interstate merger transaction with one or more
10 out-of-state banks under this subchapter in which the out-of-state bank is the
11 resulting bank, and the out-of-state bank may thereafter maintain and operate
12 the branches in Arkansas of any Arkansas bank that was a party to the
13 interstate merger transaction, provided that the conditions and filing
14 requirements of this subchapter and Subchapter 10, Chapter 48, Title 23 of
15 Arkansas Code Annotated (23-48-1001 et seq.) are met.

16 23-48-904. De Novo Interstate Branches or Acquisition of Interstate
17 Branches Prohibited.

18 (a) No state bank may establish or maintain a de novo interstate branch
19 or engage in a transaction involving the acquisition of an interstate branch.

20 (b) No out-of-state bank may establish or maintain a de novo interstate
21 branch in Arkansas or engage in a transaction involving the acquisition of an
22 interstate branch in Arkansas.

23 23-48-905. Notice and Filing Requirements.

24 Any out-of-State bank that will be the resulting bank pursuant to an
25 interstate merger transaction involving a state bank shall notify the
26 Commissioner of the proposed merger not later than the date on which it files
27 an application for an interstate merger transaction with the responsible
28 federal bank supervisory agency, and shall submit a copy of that application
29 to the Commissioner and pay the filing fee, if any, required by the
30 Commissioner. Any state bank which is a party to such interstate merger
31 transaction shall comply with Subchapter 5, Chapter 48, Title 23 of Arkansas
32 Code Annotated (23-48-501 et seq.) and with all other applicable state and
33 federal laws. Any out-of-state bank which shall be the resulting bank in such
34 an interstate merger transaction shall comply with applicable requirements of
35 Subchapter 10, Chapter 48, Title 23 of Arkansas Code Annotated (23-48-1001 et
36 seq.).

1 23-48-906. Powers; Additional Branches.

2 (a) An out-of-state state-chartered bank which establishes and maintains
3 one or more branches in Arkansas under this subchapter may conduct any
4 activities at such branch or branches which are authorized under the laws of
5 Arkansas for state banks.

6 (b) A state bank may conduct any activities at any branch outside
7 Arkansas which are permissible for a bank chartered by the host State in which
8 the branch is located; provided that the Commissioner may prohibit any state
9 bank from engaging in any activity not expressly allowed by the Arkansas
10 Banking Code, if the Commissioner determines, by order or regulation, that the
11 involvement of out-of-state branches of state banks in such activities would
12 threaten the safety or soundness of state banks.

13 (c) An out-of-state bank that has established or acquired a branch in
14 Arkansas under this subchapter may establish or acquire additional branches or
15 limited purpose offices in Arkansas to the same extent that any Arkansas bank
16 may establish or acquire additional branches or limited purpose offices in
17 Arkansas under applicable state and federal law.

18 23-48-907. Examinations; Periodic Reports; Cooperative Agreements; Fees.

19 (a) To the extent consistent with subsection (c) of this section, the
20 Commissioner may make such examinations of any branch established and
21 maintained in Arkansas pursuant to this subchapter by an out-of-state state-
22 chartered bank as the Commissioner may deem necessary to determine whether the
23 branch is being operated in compliance with the laws of this state and in
24 accordance with safe and sound banking practices. The provisions of the
25 Arkansas Banking Code shall apply to such examinations.

26 (b) The Commissioner may prescribe requirements for periodic reports
27 regarding any registered out-of-state bank that operates a branch in Arkansas.
28 The required reports shall be provided by such bank. Any reporting
29 requirements prescribed by the Commissioner under this subsection (b) shall be
30 (i) consistent with the reporting requirements applicable to state banks and
31 (ii) appropriate for the purpose of enabling the Commissioner to carry out his
32 responsibilities under this subchapter.

33 (c) The Commissioner may enter into cooperative, coordinating and
34 information-sharing agreements with any other bank supervisory agencies or any
35 organization affiliated with or representing one or more bank supervisory
36 agencies with respect to the periodic examination or other supervision of any

1 branch in Arkansas of an out-of-state state-chartered bank, or any branch of a
2 state bank in any host state, and the Commissioner may accept such parties'
3 reports of examination and reports of investigation in lieu of conducting his
4 own examinations or investigations.

5 (d) The Commissioner may enter into contracts with any bank supervisory
6 agency that has concurrent jurisdiction over a state bank or an out-of-state
7 state-chartered bank operating a branch in this state pursuant to this
8 subchapter to engage the services of such agency's examiners at a reasonable
9 rate of compensation, or to provide the services of the Commissioner's
10 examiners to such agency at a reasonable rate of compensation. Any such
11 contract shall be deemed a sole source contract under 19-11-232.

12 (e) The Commissioner may enter into joint examinations or joint
13 enforcement actions with other bank supervisory agencies having concurrent
14 jurisdiction over any branch in Arkansas of an out-of-state state-chartered
15 bank or any branch of a state bank in any host state; provided that the
16 Commissioner may at any time take such actions independently if the
17 Commissioner deems such actions to be necessary or appropriate to carry out
18 his responsibilities under this subchapter or to ensure compliance with the
19 laws of this state; but provided further, that, in the case of an out-of-state
20 state-chartered bank, the Commissioner shall recognize the exclusive authority
21 of the home state regulator over corporate governance matters and the primary
22 responsibility of the home state regulator with respect to safety and
23 soundness matters.

24 (f) Each out-of-state state-chartered bank that maintains one or more
25 branches in Arkansas may be assessed and, if assessed, shall pay supervisory
26 and examination fees in accordance with the Arkansas Banking Code and
27 regulations of the Commissioner. Such fees may be shared with other bank
28 supervisory agencies or any organization affiliated with or representing one
29 or more bank supervisory agencies in accordance with agreements between such
30 parties and the Commissioner.

31 23-48-908. Enforcement.

32 If the Commissioner determines that a branch maintained by an
33 out-of-state state-chartered bank in Arkansas is being operated in violation
34 of any provision of the laws of Arkansas, or that such branch is being
35 operated in an unsafe or unsound manner, the Commissioner shall have the
36 authority to take all such enforcement actions as he would be empowered to

1 take if the branch were a state bank; provided, that the Commissioner shall
 2 promptly give notice to the home state regulator of each enforcement action
 3 taken against an out-of-state state-chartered bank and, to the extent
 4 practicable, shall consult and cooperate with the home state regulator in
 5 pursuing and resolving the enforcement action.

6 23-48-909. Regulations.

7 The Commissioner, with the approval of the Banking Board, may promulgate
 8 such regulations as he determines to be necessary or appropriate in order to
 9 implement the provisions of this subchapter.

10 23-48-910. Notice of Subsequent Merger.

11 Each registered out-of-state bank that has established and maintains a
 12 branch in this state pursuant to this subchapter, shall give at least thirty
 13 (30) days' prior written notice (or, in the case of an emergency transaction,
 14 such shorter notice as is consistent with applicable state or federal law) to
 15 the Commissioner of any merger, consolidation, or other transaction that would
 16 cause a change of control with respect to such bank or any bank holding
 17 company that controls such bank, which requires that an application be filed
 18 pursuant to the Federal Change in Bank Control Act of 1978, as amended, 12
 19 U.S.C. 1817(j), or the Federal Bank Holding Company Act of 1956, as amended,
 20 12 U.S.C. 1841 et seq., or any successor statutes thereto.

21 23-48-911. Severability.

22 If any provision of this subchapter or the application of any such
 23 provision is found by any court of competent jurisdiction in the United States
 24 to be invalid as to any bank, bank holding company, foreign bank, or other
 25 person or circumstances, or to be superseded by federal law, the remaining
 26 provisions hereof shall not be affected and shall continue to apply to any
 27 bank, bank holding company, foreign bank, or other person or circumstance.

28 SUBCHAPTER 10

29 REGISTRATION OF OUT-OF-STATE BANKS

30 23-48-1001. Application for certificate of authority.

31 (a) On or before the consummation of an interstate merger transaction in
 32 which the resulting bank is an out-of-state bank which will operate branches
 33 in this state, the resulting bank shall apply for a certificate of authority
 34 to transact banking business in this state by delivering an application to the
 35 Commissioner for filing. The application must set forth:

36 (1) The name of the bank;

1 (2) The name of the state or country under whose law it is
 2 chartered;

3 (3) Its date of formation and period of duration;

4 (4) The street address of its principal office;

5 (5) The address of its registered office in this state and the
 6 name of its registered agent at that office; and

7 (6) The number and par value, if any, of shares of the bank's
 8 capital stock owned or to be owned by residents of this state.

9 (b) The bank shall deliver with the completed application a certificate
 10 of existence (or a document of similar import) duly authenticated by the bank
 11 supervisory agency which chartered the bank or other official having custody
 12 of the corporate records of banking institutions in the state or country under
 13 whose law it is chartered.

14 23-48-1002. Amended certificate of authority.

15 (a) A registered out-of-state bank shall apply for an amended
 16 certificate of authority from the Commissioner if it changes:

17 (1) The name of the bank;

18 (2) The period of its duration; or

19 (3) The state or country under which it is chartered.

20 (b) The requirements of 23-48-1001 for applying for an original
 21 certificate of authority shall also apply to applications for obtaining an
 22 amended certificate of authority hereunder.

23 23-48-1003. Effect of certificate of authority.

24 (a) A certificate of authority authorizes the out-of-state bank to which
 25 it is issued to transact business in this state subject, however, to the right
 26 of the state to revoke the certificate as provided in this chapter.

27 (b) An out-of-state bank with a valid certificate of authority has the
 28 same but no greater rights and has the same but no greater privileges as, and
 29 except as otherwise provided by this chapter, is subject to the same duties,
 30 restrictions, penalties, and liabilities now or later imposed on, a state bank
 31 of like character.

32 (c) This chapter does not authorize this state to regulate corporate
 33 governance matters of an out-of-state bank authorized to transact business in
 34 this state.

35 23-48-1004. Registered office and registered agent of out-of-state
 36 bank.

1 Each registered out-of-state bank must continuously maintain in this
2 state:

3 (1) A registered office that may be the same as any of its places
4 of business; and

5 (2) A registered agent, who may be:

6 (i) An individual who resides in this state and whose
7 business office is identical with the registered office;

8 (ii) A state bank, domestic corporation or not-for-profit
9 corporation whose business office is identical with the registered office; or

10 (iii) A foreign corporation or foreign not-for-profit
11 corporation authorized to transact business in this state whose business
12 office is identical with the registered office.

13 23-48-1005. Change of registered office or registered agent of out-of-
14 state bank.

15 (a) A registered out-of-state bank may change its registered office or
16 registered agent by delivering to the Commissioner for filing a statement of
17 change that sets forth:

18 (1) Its name;

19 (2) The street address of its current registered office;

20 (3) If the current registered office is to be changed, the street
21 address of its new registered office;

22 (4) The name of its current registered agent;

23 (5) If the current registered agent is to be changed, the name of
24 its new registered agent and the new agent's written consent (either on the
25 statement or attached to it) to the appointment; and

26 (6) That after the change or changes are made, the street
27 addresses of its registered office and the business office of its registered
28 agent will be identical.

29 (b) If a registered agent changes the street address of his business
30 office, he may change the street address of the registered office of any out-
31 of-state bank for which he is the registered agent by notifying the bank in
32 writing of the change and signing (either manually or in facsimile) and
33 delivering to the Commissioner for filing a statement of change that complies
34 with the requirements of subsection (a) of this section and recites that the
35 bank has been notified of the change.

36 23-48-1006. Resignation of registered agent of out-of-state bank.

1 (a) The registered agent of an out-of-state bank may resign his agency
 2 appointment by signing and delivering to the Commissioner for filing the
 3 original and two (2) exact or conformed copies of a statement of resignation.
 4 The statement of resignation may include a statement that the registered
 5 office is also discontinued.

6 (b) After filing the statement, the Commissioner shall attach the filing
 7 receipt to one (1) copy and mail the copy and receipt to the registered office
 8 if not discontinued. The Commissioner shall mail the other copy to the out-of-
 9 state bank at its principal office address shown in its most recent annual
 10 franchise tax report.

11 (c) The agency appointment is terminated, and the registered office
 12 discontinued if so provided, on the thirty-first day after the date on which
 13 the statement was filed.

14 23-48-1007. Service on out-of-state banks.

15 (a) The registered agent of a registered out-of-state bank is the bank's
 16 agent for service of process, notice, or demand required or permitted by law
 17 to be served on the out-of-state bank.

18 (b) A registered out-of-state bank may be served by registered or
 19 certified mail, return receipt requested, addressed to the secretary or
 20 cashier of the out-of-state bank at its principal office shown in its
 21 application for a certificate of authority or in its most recent annual
 22 franchise tax report if the out-of-state bank:

23 (1) Has no registered agent or its registered agent cannot with
 24 reasonable diligence be served;

25 (2) Has withdrawn from transacting business in this state under
 26 23-48-1008; or

27 (3) Has had its certificate of authority revoked under 23-48-1010.

28 (c) Service is perfected under subsection (b) of this section at the
 29 earliest of:

30 (1) The date the out-of-state bank receives the mail;

31 (2) The date shown on the return receipt, if signed on behalf of
 32 the out-of-state bank; or

33 (3) Five (5) days after its deposit in the United States mail, as
 34 evidenced by the postmark, if mailed postpaid and correctly addressed.

35 (d) This section does not prescribe the only means, or necessarily the
 36 required means, of serving a registered out-of-state bank.

1 23-48-1008. Withdrawal of out-of-state bank.

2 (a) A registered out-of-state bank may not withdraw from this state
3 until it obtains a certificate of withdrawal from the Commissioner.

4 (b) A registered out-of-state bank may apply for a certificate of
5 withdrawal by delivering an application to the Commissioner for filing. The
6 application must set forth:

7 (1) The name of the out-of-state bank and the name of the state or
8 country under whose law it is chartered;

9 (2) That it is not transacting business in this state and that it
10 surrenders its authority to transact business in this state;

11 (3) That it revokes the authority of its registered agent to
12 accept service on its behalf and appoints the Commissioner as its agent for
13 service of process in any proceeding based on a cause of action arising during
14 the time it was authorized to transact business in this state;

15 (4) A mailing address to which the Commissioner may mail a copy of
16 any process served on him under subdivision (3) of this subsection; and

17 (5) A commitment to notify the Commissioner in the future of any
18 change in its mailing address for a period of time to be determined by the
19 Commissioner.

20 (c) After the withdrawal of the bank is effective, service of process on
21 the Commissioner under this section is service on the out-of-state bank. Upon
22 receipt of process, the Commissioner shall mail a copy of the process to the
23 out-of-state bank at the mailing address set forth under subsection (b) of
24 this section.

25 23-48-1009. Grounds for revocation.

26 The Commissioner may commence a proceeding under 23-48-1010 to revoke
27 the certificate of authority of a registered out-of-state bank if:

28 (1) The out-of-state bank does not deliver its annual franchise tax
29 report to the Secretary of State within sixty (60) days after it is due;

30 (2) The out-of-state bank does not pay within sixty (60) days after they
31 are due any franchise taxes or penalties imposed by this chapter or other law;

32 (3) The out-of-state bank is without a registered agent or registered
33 office in this state for sixty (60) days or more;

34 (4) The out-of-state bank does not inform the Commissioner under 23-48-
35 1005 or 23-48-1006 that its registered agent or registered office has changed,
36 that its registered agent has resigned, or that its registered office has been

1 discontinued within sixty (60) days of the change, resignation, or
2 discontinuance;

3 (5) The out-of-state bank, or an officer, director or employee thereof,
4 is found to be violating federal banking laws or regulations, violating the
5 banking laws of this state or Department regulations, violating any regulatory
6 agreement, or jeopardizing the safety and soundness of the out-of-state bank.

7 (6) An incorporator, director, officer, or agent of the out-of-state
8 bank signed a document he knew was false in any material respect with intent
9 that the document be delivered to the Commissioner for filing; or

10 (7) The Commissioner receives a duly authenticated certificate from the
11 bank supervisory agency or other official having custody of the corporate
12 records of banking institutions in the state or country under whose law the
13 out-of-state bank is chartered stating that it has been dissolved or
14 disappeared as the result of a merger.

15 23-48-1010. Procedure for and effect of revocation.

16 (a) If the Commissioner determines that one (1) or more grounds exist
17 under 23-48-1009 for revocation of a certificate of authority, he shall serve
18 the out-of-state bank with written notice of his determination under 23-48-
19 1007.

20 (b) If an out-of-state bank does not correct each ground for revocation
21 or demonstrate to the reasonable satisfaction of the Commissioner that each
22 ground determined by the Commissioner does not exist within thirty (30) days
23 after service of the notice is perfected under 23-48-1007, the Commissioner
24 may revoke the out-of-state bank's certificate of authority by signing a
25 certificate of revocation that recites the ground or grounds for revocation
26 and its effective date. The Commissioner shall file the original of the
27 certificate and serve a copy on the out-of-state bank under 23-48-1007.

28 (c) The authority of an out-of-state bank to transact business in this
29 state ceases on the date shown on the certificate revoking its certificate of
30 authority.

31 (d) The Commissioner's revocation of an out-of-state bank's certificate
32 of authority appoints the Commissioner the out-of-state bank's agent for
33 service of process in any proceeding based on a cause of action which arose
34 during the time the out-of-state bank was authorized to transact business in
35 this state. Service of process on the Commissioner under this subsection is
36 service on the out-of-state bank. Upon receipt of process, the Commissioner

1 shall mail a copy of the process to the secretary or cashier of the out-of-
2 state bank at its principal office shown in its most recent annual franchise
3 tax report or in any subsequent communication received from the bank stating
4 the current mailing address of its principal office, or, if none are on file,
5 in its application for a certificate of authority.

6 (e) Revocation of an out-of-state bank's certificate of authority does
7 not terminate the authority of the registered agent of the bank.

8 23-48-1011. Appeal from revocation.

9 (a) An out-of-state bank may appeal the Commissioner's revocation of its
10 certificate of authority to the Pulaski County Circuit Court within thirty
11 (30) days after service of the certificate of revocation is perfected under
12 23-48-1007. The out-of-state bank appeals by petitioning the court to set
13 aside the revocation and attaching to the petition copies of its certificate
14 of authority and the Commissioner's certificate of revocation.

15 (b) The court may order the Commissioner to reinstate the certificate of
16 authority or may take any other action the court considers appropriate.

17 (c) The court's final decision may be appealed as in other civil
18 proceedings."

19

20 SECTION 21. Severability.

21 If any provision or clause of this act or application thereof to any
22 person or circumstance is held invalid, such invalidity shall not affect other
23 provisions or applications of this act which can be given effect without the
24 invalid provisions or application, and to this end the provisions of this act
25 are declared to be severable.

26

27 SECTION 22. Repealer.

28 All other laws and parts of laws in conflict with this act are hereby
29 repealed.

30

31 SECTION 23. Amendatory.

32 All provisions of this act of a general and permanent nature are
33 amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

35

36 SECTION 24. Emergency. It is hereby found and determined by the General

1 Assembly that certain provisions of the Riegle-Neal Interstate Banking and
2 Branching Efficiency Act of 1994 become effective on June 1, 1997 and that
3 this act should become effective prior to the effective date of those certain
4 provisions of the Riegle-Neal Interstate Banking and Branching Efficiency Act
5 of 1994. Therefore, an emergency is declared to exist and this act being
6 immediately necessary for the preservation of the public peace, health and
7 safety shall be in full force and effect from and after May 31, 1997.

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