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2 81st General Assembly
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A Bill

SENATE BILL 691

4
5 By: Senators Harriman, Beebe, Wilson, and Bell
6 By: Representatives Wilkinson, Newman, Miller, Purdom, and Cunningham

For An Act To Be Entitled

"THE ARKANSAS TRUST INSTITUTIONS ACT."

Subtitle

"THE ARKANSAS TRUST INSTITUTIONS ACT."

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

SECTION 1. Title.

This Act may be cited as the "Arkansas Trust Institutions Act".

SECTION 2. Certain Definitions.

For the purposes of this Act:

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Act as a fiduciary" or "acting as a fiduciary" means to:

(a) accept or execute trusts, including to (i) act as trustee under a written agreement; (ii) receive money or other property in its capacity as trustee for investment in real or personal property; (iii) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction; (iv) act as trustee of the estate of a deceased person; or (v) act as trustee for a minor or incapacitated person;

(b) administer in any other fiduciary capacity real or tangible personal property; or

1 (c) act pursuant to order of court of competent jurisdiction as
 2 executor or administrator of the estate of a deceased person or as a guardian
 3 or conservator for a minor or incapacitated person.

4 (3) "Administer" with respect to real or tangible personal property
 5 means, as an agent or in another representative capacity, to possess,
 6 purchase, sell, lease or insure, safekeep or otherwise manage the property.

7 (4) "Affiliate" means a company that directly or indirectly controls,
 8 is controlled by, or is under common control with a trust institution or other
 9 company.

10 (5) "Authorized trust institutions" means any state trust company,
 11 subsidiary trust company, or trust office of a trust institution located in
 12 Arkansas.

13 (6) "Bank" means a state bank, national bank, any bank chartered by any
 14 state of the United States or any foreign bank organized under the laws of a
 15 territory of the United States, Puerto Rico, Guam, American Samoa or the
 16 Virgin Islands, the deposits of which are insured by the Federal Deposit
 17 Insurance Corporation.

18 (7) "Bank supervisory agency" means:

19 (a) Any agency of another state with primary responsibility for
 20 chartering and supervising a trust institution; and

21 (b) The Office of the Comptroller of the Currency, the Federal
 22 Deposit Insurance Corporation, the Board of Governors of the Federal Reserve
 23 System, the Office of Thrift Supervision and any successor to these agencies.

24 (8) "Branch" with respect to a depository institution has the meaning
 25 set forth in Arkansas Code §23-48-702.

26 (9) "Capital" means:

27 (a) the sum of:

28 (i) the par value of all shares of the state trust company
 29 having a par value that have been issued;

30 (ii) the consideration fixed by the board in the manner provided
 31 by the Arkansas Business Corporation Act (A.C.A. §§4-27-101 et seq.) for all
 32 shares of the state trust company without par value that have been issued,
 33 except a part of that consideration that:

34 (A) has been actually received;

35 (B) is less than all of that consideration; and

36 (C) the board, by resolution adopted not later than sixty

1 (60) days after the date of issuance of those shares, has allocated to surplus
2 with the prior approval of the Commissioner; and

3 (iii) an amount not included in subparagraphs (i) and (ii) that
4 has been transferred to capital of the state trust company, on the payment of
5 a share dividend or on adoption by the board of a resolution directing that
6 all or part of surplus be transferred to capital, minus each reduction made as
7 permitted by law; less

8 (b) all amounts otherwise included in paragraphs (a)(i) and (ii)
9 of this subdivision that are attributable to the issuance of securities by the
10 state trust company and that the Commissioner determines, after notice and an
11 opportunity for hearing, should be classified as debt rather than equity
12 securities.

13 (10) "Capital base" means the sum of capital, surplus, and undivided
14 profits, plus any additions and less any subtractions which the Commissioner
15 may by regulation prescribe.

16 (11) "Charter" means a charter, license or other authority issued by
17 the Commissioner or a bank supervisory agency authorizing a trust institution
18 to act as a fiduciary in its home state.

19 (12) "Client" means a person to whom a trust institution owes a duty or
20 obligation under a trust or other account administered by the trust
21 institution or as an advisor or agent, regardless of whether the trust
22 institution owes a fiduciary duty to the person. The term includes the non-
23 contingent beneficiaries of an account.

24 (13) "Commissioner" means the Arkansas Bank Commissioner then in office
25 and, where appropriate, all of his or her successors and predecessors in
26 office.

27 (14) "Company" includes a bank, trust company, subsidiary trust
28 company, corporation, limited liability company, partnership, association,
29 business trust, or another trust.

30 (15) "Control" means:

31 (a) the ownership of or ability or power to vote, directly, acting
32 through one or more other persons, or otherwise indirectly, more than twenty-
33 five percent (25%) of the outstanding shares of a class of voting securities
34 of a state trust company or other company;

35 (b) the ability to control the election of a majority of the board
36 of a state trust company or other company;

1 (c) the power to exercise, directly or indirectly, a controlling
2 influence over the management or policies of the state trust company or other
3 company as determined by the Commissioner after notice and an opportunity for
4 hearing.

5 (16) "Department" means the Arkansas State Bank Department.

6 (17) "Depository institution" means any company chartered to act as a
7 fiduciary and included for any purpose within any of the definitions of
8 "insured depository institution" as set forth in 12 U.S.C. §§ 1813(c)(2) &
9 (3).

10 (18) "Equity capital" means the amount by which the total assets of a
11 state trust company exceed the total liabilities of the state trust company.

12 (19) "Equity security" means:

13 (a) stock, other than adjustable rate preferred stock and money
14 market (auction rate) preferred stock;

15 (b) a certificate of interest or participation in a profit-sharing
16 agreement, collateral-trust certificate, preorganization certificate or
17 subscription, transferable share or participation share, investment contract,
18 voting-trust certificate, or partnership interest;

19 (c) a security immediately convertible at the option of the holder
20 without payment of significant additional consideration into a security
21 described by this subdivision;

22 (d) a security carrying a warrant or right to subscribe to or
23 purchase a security described by this subdivision; and

24 (e) a certificate of interest or participation in, temporary or
25 interim certificate for, or receipt for a security described by this
26 subdivision that evidences an existing or contingent equity ownership
27 interest.

28 (20) "Fiduciary record" means a matter written, transcribed, recorded,
29 received or otherwise in the possession or control of a trust company, whether
30 in physical or electromagnetic form, that is necessary to preserve information
31 concerning an act or event relevant to an account or a client of a trust
32 company.

33 (21) "Hazardous condition" with respect to a trust company means:

34 (a) a refusal by the trust company to permit examination of its
35 books, papers, accounts, records, or affairs by the Commissioner;

36 (b) violation by a trust company of a condition of its chartering

1 or an agreement entered into between the trust company and the Commissioner;

2 or

3 (c) a circumstance or condition in which an unreasonable risk of
4 loss is threatened to clients or creditors of a trust company, excluding risk
5 of loss to a client that arises as a result of the client's decisions or
6 actions, but including a circumstance or condition in which a trust company:

7 (i) is unable or lacks the means to meet its current
8 obligations as they come due in the regular and ordinary course of business,
9 even though the book or fair market value of its assets may exceed its
10 liabilities;

11 (ii) has equity capital less than the amount of capital the
12 trust company is required to maintain under Section 10, or the adequacy of its
13 equity capital is threatened, as determined under regulatory accounting
14 principles;

15 (iii) has concentrated an excessive or unreasonable portion
16 of its assets in a particular type or character of investment;

17 (iv) violates or refuses to comply with this Act, another
18 statute or regulation applicable to trust companies, or any final and
19 enforceable order of the Commissioner;

20 (v) is in a condition that renders the continuation of a
21 particular business practice hazardous to its clients and creditors; or

22 (vi) conducts business in an unsafe or unsound manner, which
23 includes, but is not limited to conducting business with,

24 (A) inexperienced or inattentive management;

25 (B) potentially dangerous operating practices;

26 (C) infrequent or inadequate audits;

27 (D) administration of assets that is notably deficient
28 in relation to the volume and character or responsibility for asset holdings;

29 (E) failure to adhere to sound administrative
30 practices;

31 (F) frequent occurrences of violations of laws,
32 regulations or terms of the governing instruments; or,

33 (G) engaging in self-dealing or evidencing a notable
34 degree of potential or actual conflicts of interest.

35 (22) "Insider" means:

36 (a) each director, officer or principal shareholder of the trust

1 company;

2 (b) any company controlled by a person described by paragraph (a)
3 of this subdivision; or

4 (c) any person who participates or has authority to participate,
5 other than in the capacity of a director, in major policy-making functions of
6 the state trust company, whether or not the person has an official title or
7 the officer is serving without salary or compensation.

8 (23) "Insolvent" means a circumstance or condition in which a state
9 trust company:

10 (a) is unable or lacks the means to meet its current obligations
11 as they come due in the regular and ordinary course of business, even if the
12 value of its assets exceeds its liabilities;

13 (b) has equity capital less than \$1,000,000.00, as determined
14 under regulatory accounting principles;

15 (c) fails to maintain deposit insurance with the Federal Deposit
16 Insurance Corporation or its successor if the Commissioner determines that
17 deposit insurance is necessary for the safe and sound operation of the state
18 trust company, or maintains adequate security for its deposits in accordance
19 with Section 30 of this Act.

20 (d) sells or attempts to sell substantially all of its assets or
21 merges or attempts to merge substantially all of its assets or business with
22 another entity other than as provided by Sections 50 - 55 of this Act; or

23 (e) attempts to dissolve or liquidate other than as provided by
24 Sections 56 - 61 of this Act.

25 (24) "Investment security" means a marketable obligation evidencing
26 indebtedness of a person in the form of a bond, note, debenture, or other debt
27 instrument not otherwise classified as a loan or extension of credit.

28 (25) "License" means the authority granted by the Commissioner pursuant
29 to this Act to establish, acquire or maintain a trust office.

30 (26) "Loans and extensions of credit" means direct or indirect advances
31 of funds by a state trust company to a person that are conditioned on the
32 obligation of the person to repay the funds or that are repayable from
33 specific property pledged by or on behalf of the person.

34 (27) "New trust office" means a trust office located in a host state
35 which (i) is originally established by the trust institution as a trust office
36 and (ii) does not become a trust office of the trust institution as a result

1 of (A) the acquisition of another trust institution or trust office of another
2 trust institution or (B) a merger, consolidation, or conversion involving any
3 such trust institution or trust office.

4 (28) "Office" with respect to a trust institution means the principal
5 office, a trust office or a representative trust office, but not a branch.

6 (29) "Officer" means the presiding officer of the board, the principal
7 executive officer, or another officer appointed by the board of a state trust
8 company or other company, or a person or group of persons acting in a
9 comparable capacity for the state trust company or other company.

10 (30) "Operating subsidiary" means a company for which a state trust
11 company has the ownership, ability, or power to vote, directly, acting through
12 one or more other persons, or otherwise indirectly, more than fifty percent
13 (50%) of the outstanding shares of each class of voting securities or its
14 equivalent of the company.

15 (31) "Out-of-state bank" means a bank chartered to act as a fiduciary
16 in any state or states other than this state.

17 (32) "Out-of-state trust company" means either a trust company that is
18 not a state trust company or a savings association whose principal office is
19 not located in this state.

20 (33) "Out-of-state trust institution" means a trust institution that is
21 not a state trust institution.

22 (34) "Person" means an individual, a company or any other legal entity.

23 (35) "Principal office" with respect to:

24 (a) a state trust company, means a location registered with the
25 Commissioner as the state trust company's home office at which:

26 (i) the state trust company does business;

27 (ii) the state trust company keeps its corporate books and
28 a set of its material records, including material fiduciary records; and

29 (iii) at least one executive officer of the state trust
30 company maintains an office; or

31 (b) a trust institution other than a state trust company, means
32 its principal place of business in the United States.

33 (36) "Principal shareholder" means a person who owns or has the ability
34 or power to vote, directly, acting through one or more other persons, or
35 otherwise indirectly, ten percent (10%) or more of the outstanding shares of
36 any class of voting securities of a state trust company or other company.

1 (37) "Private trust company" means a trust company that does not engage
2 in a trust business with the general public.

3 (38) "Receiver" means the Commissioner, an agent of the Commissioner or
4 any federal or other governmental agency exercising the powers and duties of a
5 receiver pursuant to Section 64 of this Act.

6 (39) "Savings association" means a depository institution that is
7 neither a bank nor a foreign bank.

8 (40) "Shareholder" means an owner of a share in a state trust company.

9 (41) "Shares" means the units into which the proprietary interests of a
10 state trust company are divided or subdivided by means of classes, series,
11 relative rights, or preferences.

12 (42) "State" means any state of the United States, the District of
13 Columbia, any territory of the United States, Puerto Rico, Guam, American
14 Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the
15 Northern Mariana Islands.

16 (43) "State bank" means a bank chartered to act as a fiduciary by this
17 state.

18 (44) "State trust company" means a corporation organized or reorganized
19 under this Act.

20 (45) "State trust institution" means a trust institution having its
21 principal office in this state.

22 (46) "Subsidiary" means a company that is controlled by another person.
23 The term includes a subsidiary of a subsidiary.

24 (47) "Subsidiary trust company" means a corporation organized under the
25 Arkansas Business Corporation Act, § 4-27-101, et seq. and authorized by the
26 Commissioner pursuant to subchapter 8 of Chapter 47 of Title 23 of the
27 Arkansas Code Annotated or the Bank Holding Company Subsidiary Trust Company
28 Formation Act of 1989 to conduct trust business and business incidental to
29 trust business in this state, of which more than fifty percent (50%) of the
30 voting stock is owned, directly or indirectly, by a bank holding company which
31 also owns, directly or indirectly, an affiliated bank, as that term is defined
32 in subchapter 8 of Chapter 47 of Title 23.

33 (48) "Surplus" means the amount by which the assets of a state trust
34 company exceeds its liabilities, capital, and undivided profits.

35 (49) "Trust business" means the holding out by a person to the public
36 by advertising, solicitation or other means that the person is available to

1 perform any service of a fiduciary in this or another state, including but not
2 limited to:

3 (a) acting as a fiduciary, or

4 (b) to the extent not acting as a fiduciary, any of the following:

5 (i) receiving for safekeeping personal property of every
6 description;

7 (ii) acting as assignee, bailee, conservator, custodian,
8 escrow agent, registrar, receiver or transfer agent; or (iii) acting as
9 financial advisor, investment advisor or manager, agent or attorney-in-fact in
10 any agreed upon capacity.

11 (50) "Trust company" means a state trust company, subsidiary trust
12 company or any other company chartered to act as a fiduciary that is neither a
13 depository institution nor a foreign bank.

14 (51) "Trust deposits" means the client funds held by a state trust
15 company and authorized to be deposited with itself pending investment,
16 distribution, or payment of debts on behalf of the client.

17 (52) "Trust institution" means a depository institution, state bank or
18 trust company.

19 (53) "Trust office" means an office, other than the principal office,
20 at which a trust institution is licensed by the Commissioner to act as a
21 fiduciary.

22 (54) "Unauthorized trust activity" means (a) a company, other than one
23 identified in Section 65(a), acting as a fiduciary within this state, (b) a
24 company engaging in a trust business in this state at any office of such
25 company that is not its principal office, if it is a state trust institution,
26 or that is not a trust office or a representative trust office of such
27 company, or (c) an out-of-state trust institution engaging in a trust business
28 in this state at any time an order issued by the Commissioner pursuant to
29 Section 82 is in effect.

30 (55) "Undivided profits" means the part of equity capital of a state
31 trust company equal to the balance of its net profits, income, gains, and
32 losses since the date of its formation, minus subsequent distributions to
33 shareholders and transfers to surplus or capital under share dividends or
34 appropriate board resolutions. The term includes amounts allocated to
35 undivided profits as a result of a merger.

36 (56) "Voting security" means a share, or other evidence of proprietary

1 interest in a state trust company or other company that has as an attribute
2 the right to vote or participate in the election of the board of the state
3 trust company or other company, regardless of whether the right is limited to
4 the election of fewer than all of the board members. The term includes a
5 security that is convertible or exchangeable into a voting security.
6 These definitions shall be liberally construed to accomplish the purposes of
7 the Act. The Commissioner by regulation may adopt other definitions to
8 accomplish the purposes of this Act.

9

10 SECTION 3. Regulations

11 The Commissioner may promulgate such regulations as he or she determines
12 to be necessary or appropriate in order to implement the provisions of this
13 Act.

14

15 SECTION 4. Organization and Powers of State Trust Company.

16 (a) Subject to the other provisions of this act, one or more persons
17 may organize and charter a state trust company. A state trust company may
18 perform any act as a fiduciary or engage in any trust business within or
19 without this state.

20 (b) Subject to Section 11 of this Act, a state trust company may
21 exercise the powers of an Arkansas business corporation reasonably necessary
22 or helpful to enable exercise of its specific powers under this Act.

23 (c) A state trust company may contribute to community funds, or to
24 charitable, philanthropic, or benevolent instrumentalities conducive to public
25 welfare, amounts that its board considers appropriate and in the interests of
26 the state trust company.

27 (d) Subject to Section 30 of this Act, a state trust company may
28 deposit trust funds with itself or an affiliate.

29 (e) Subject to obtaining any required insurance from the Federal
30 Deposit Insurance Corporation (FDIC), a state trust company may receive and
31 pay deposits with or without interest, made by agencies of the United States
32 Government or of a state, county, or municipality.

33

34 SECTION 5. Articles of Association of State Trust Company.

35 The articles of association of a state trust company must be
36 signed and acknowledged by each organizer and must contain:

- 1 (a) the name of the state trust company;
2 (b) the period of its duration, which may be perpetual;
3 (c) the powers of the state trust company, which may be stated
4 as:
5 (1) all powers granted to a state trust company in this
6 state; or
7 (2) a list of the specific powers that the state trust
8 company chooses and is authorized to exercise;
9 (d) the aggregate number of shares that the state trust company
10 will be authorized to issue, the number of classes of shares, which may be one
11 or more, the number of shares of each class if more than one class, and a
12 statement of the par value of the shares of each class or that the shares are
13 to be without par value;
14 (e) if the shares are to be divided into classes, the designation
15 of each class and statement of the preferences, limitations, and relative
16 rights of the shares of each class;
17 (f) any provision granting to shareholders the preemptive right
18 to acquire additional shares of the state trust company;
19 (g) any provision granting the right of shareholders to
20 cumulative voting in the election of directors;
21 (h) the aggregate amount of consideration to be received for all
22 shares initially issued by the state trust company, and a statement signed and
23 verified by the organizers that the capital stock has been fully subscribed
24 and the purchase price therefor has been paid into an escrow account approved
25 by the Commissioner;
26 (i) any provision consistent with law that the organizers elect
27 to set forth in the articles of association for the regulation of the internal
28 affairs of the state trust company or that is otherwise required by this Act
29 to be set forth in the articles of association;
30 (j) the street address of the state trust company's principal
31 office required to be maintained under Section 72 of this Act; and
32 (k) the number of directors or managers constituting the initial
33 board, which may not be fewer than three (3), and the names and street
34 addresses of the persons who are to serve as directors until the first annual
35 meeting of shareholders or until successor directors have been elected and
36 qualified.

1

2 SECTION 6. Application for State Trust Company Charter.

3 (a) An application for a state trust company charter must be made under
4 oath and in the form required by the Commissioner and must be supported by
5 information, data, records, and opinions of counsel that the Commissioner
6 requires. The application must be accompanied by anon-refundable filing fe of
7 not less than three thousand dollars (\$3,000.00) nor more than ten thousand
8 dollars (\$10,000.00) as set by regulation of the Commissioner and proof of
9 escrow of deposit for the required capital.

10 (b) The Commissioner shall grant a state trust company charter only on
11 proof that one or more viable markets exist within or outside of this state
12 that may be served in a profitable manner by the establishment of the proposed
13 state trust company. In making such a determination, the Commissioner shall
14 (i) examine the business plan which shall be submitted as part of the
15 application for a state trust company charter and (ii) consider:

16 (1) the market or markets to be served;

17 (2) whether the proposed organizational and capital structure and
18 amount of initial capitalization is adequate for the proposed business and
19 location;

20 (3) whether the anticipated volume and nature of business
21 indicates a reasonable probability of success and profitability based on the
22 market sought to be served;

23 (4) whether the proposed officers and directors, as a group, have
24 sufficient fiduciary experience, ability, standing, competence,
25 trustworthiness, and integrity to justify a belief that the proposed state
26 trust company will operate in compliance with law and that success of the
27 proposed state trust company is probable;

28 (5) whether each principal shareholder has sufficient experience,
29 ability, standing, competence, trustworthiness, and integrity to justify a
30 belief that the proposed state trust company will be free from improper or
31 unlawful influence or interference with respect to the state trust company's
32 operation in compliance with law; and

33 (6) whether the organizers are acting in good faith.

34 (c) The failure of an applicant to furnish required information, data,
35 opinions of counsel, other material or the required fee is considered an
36 abandonment of the application.

1

2 SECTION 7. Notice and Investigation of Charter Application.

3 (a) The Commissioner shall notify the organizers when the application
4 is complete and accepted for filing and all required fees and deposits have
5 been paid. Upon filing of an application with the Commissioner, the organizers
6 of the proposed state trust company shall give notice of filing through
7 publication by one (1) insertion in a newspaper published in the City of
8 Little Rock and having a general and substantially statewide circulation and
9 shall give written notice of filing through the United States mail to all
10 trust institutions maintaining a principal office or a trust office in the
11 county wherein the principal office of the proposed state trust company is to
12 be located.

13 (b) At the expense of the organizers, the Commissioner shall
14 investigate the application and inquire into the identity and character of
15 each proposed director, officer, and principal shareholder. The Commissioner
16 shall prepare a written report of the investigation, and any person may
17 request a copy of the nonconfidential portions of the application and written
18 report as provided by A.C.A. §25-19-101 et seq. Regulations adopted under
19 this Act may specify the confidential or nonconfidential character of
20 information obtained by the Department under this section. Except as provided
21 in regulations regarding confidential information, the financial statement of
22 a proposed officer, director or principal shareholder is confidential and not
23 subject to public disclosure.

24

25 SECTION 8. Hearing and Decision on Charter Application.

26 (a) No person shall appear in opposition to the application unless such
27 person shall have filed a written protest to the granting of the application
28 within thirty (30) days of the date of the notice of the filing of the
29 application. Such protest must state the grounds for objection and must be
30 accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor
31 more than five thousand dollars (\$5,000) for each protestant, such amount to
32 be set by regulation promulgated by the Commissioner.

33 (b) Once the written report of investigation has been completed, the
34 Commissioner shall establish a time for hearing on the charter application.

35 (c) Notice of the time, place, and purpose of the hearing shall be given
36 at least thirty (30) before the hearing as follows:

1 (1) By letter from the Commissioner to the organizers of the
2 proposed state trust company and to each trust institution to which the
3 organizers of the application are required to give written notice pursuant to
4 Section 7(a); and

5 (2) By letter from the Commissioner to each person who has
6 notified the Commissioner of an intention to oppose the application, provided
7 that if a group of persons has protested the application, the notice may be
8 given to one (1) member of the group; and

9 (3) By release to news media.

10 (d) If the Commissioner sets a hearing, the Commissioner shall conduct
11 a public hearing and as many prehearing conferences and opportunities for
12 discovery as the Commissioner considers advisable and consistent with
13 applicable law and regulations.

14 (e) Based on the record of any hearing conducted pursuant to paragraph
15 (d) above, the Commissioner shall determine whether all of the necessary
16 conditions set forth in Section 6(b) of this Act have been established and
17 shall enter an order granting or denying the charter. The Commissioner may
18 make approval of any application conditional and shall include any conditions
19 in the order granting the charter.

20

21 SECTION 9. Issuance of Charter.

22 (a) A state trust company may not engage in the trust business until it
23 receives its charter from the Commissioner. The Commissioner may not deliver
24 the charter until the state trust company has:

25 (1) elected or qualified the initial officers and directors named
26 in the application for charter or other officers and directors approved by the
27 Commissioner; and

28 (2) complied with all other requirements of this Act relative to
29 the organization of a state trust company.

30 (b) If a state trust company does not open and engage in the trust
31 business within six (6) months after the date it receives its charter or
32 conditional approval of application for charter, or within such further period
33 as such period may be extended, the Commissioner shall revoke the charter or
34 cancel the conditional approval of application for charter without judicial
35 action.

36

1 SECTION 10. Required Capital.

2
3 (a) The Commissioner may not issue a charter to a state trust company
4 having required capital of less than one million dollars (\$1,000,000.00),
5 except as provided in subsection (b) of this section.

6 (b) The Commissioner may require additional capital for a proposed or
7 existing state trust company or, on application in the exercise of discretion
8 consistent with protecting safety and soundness, reduce the amount of minimum
9 capital required for a proposed or existing state trust company, if the
10 Commissioner finds the condition and operations of an existing state trust
11 company or the proposed scope or type of operations of a proposed state trust
12 company requires additional, or permits reduced, capital consistent with the
13 safety and soundness of the state trust company. The safety and soundness
14 factors to be considered by the Commissioner in the exercise of such
15 discretion include but are not limited to,

16 (1) the nature and type of business conducted;

17 (2) the nature and degree of liquidity in assets held in a
18 corporate capacity;

19 (3) the amount of fiduciary assets under management;

20 (4) the type of fiduciary assets held and the depository of such
21 assets;

22 (5) the complexity of fiduciary duties and degree of discretion
23 undertaken;

24 (6) the competence and experience of management;

25 (7) the extent and adequacy of internal controls;

26 (8) the presence or absence of annual unqualified audits by an
27 independent certified public accountant;

28 (9) the reasonableness of business plans for retaining or
29 acquiring additional capital; and

30 (10) the existence and adequacy of insurance obtained or held by
31 the trust company for the purpose of protecting its clients, beneficiaries and
32 grantors.

33 (c) The proposed effective date of an order requiring an existing state
34 trust company to increase its capital must be stated in the order as no sooner
35 than twenty (20) days after the date the proposed order is mailed or
36 delivered. Unless the state trust company requests a hearing before the

1 Commissioner in writing before the effective date of the proposed order, the
2 order becomes effective and is final and nonappealable. This subsection does
3 not prohibit an application to reduce capital requirements of a proposed or an
4 existing state trust company under subsection (b) of this section.

5 (d) Subject to subsection (b) of this section and section 18 of this
6 Act, a state trust company to which the Commissioner issues a charter shall at
7 all times maintain capital in at least the amount required under subsection
8 (a) of this section, plus any additional amount or less any reduction the
9 Commissioner directs under subsection (b) of this section.

10

11 SECTION 11. Application of Laws Relating to General Business
12 Corporations.

13 (a) The Arkansas Business Corporation Act of 1987 applies to a trust
14 company to the extent not inconsistent with this Act or the proper business of
15 a trust company, except that any reference to the secretary of state means the
16 Commissioner unless the context requires otherwise.

17 (b) Unless expressly authorized by this Act or a regulation of the
18 Commissioner, a trust company may not take an action authorized by the
19 Arkansas Business Corporation Act regarding its corporate status, capital
20 structure, or a matter of corporate governance, of the type for which the
21 Arkansas Business Corporation Act would require a filing with the secretary of
22 state if the trust company were a business corporation, without first
23 submitting the filing to the Commissioner for the same purposes for which it
24 otherwise would be required to be submitted to the secretary of state and
25 compliance with the applicable provisions of this Act.

26 (c) The Commissioner may adopt regulations to limit or refine the
27 applicability of subsection (a) of this section to a trust company or to alter
28 or supplement the procedures and requirements of the Arkansas Business
29 Corporation Act applicable to an action taken under this act.

30

31 SECTION 12. Commissioner Hearings; Appeals.

32 (a) This section does not grant a right to a hearing to a person that
33 is not otherwise granted by governing law. A hearing before the Commissioner
34 that is required or authorized by law may be conducted by a hearing officer on
35 behalf of the Commissioner. A matter made confidential by law must be
36 considered by the Commissioner in a closed hearing.

1 (b) The Commissioner may convene a hearing to receive evidence and
2 argument regarding any matter before the Commissioner for decision or review
3 under this Act.

4 (c) No person shall appear in opposition to the application unless such
5 person shall have filed a written protest pursuant to Section 8 and paid the
6 applicable fee.

7 (d) At the hearing all organizers of the proposed state trust company
8 and any person making a timely written protest against the application may
9 appear. The attorneys for any such person may appear and be heard.

10 (e) The Commissioner may subpoena witnesses on his own motion or on the
11 request of any party to the proceedings.

12 (f) The admission of evidence at such hearing shall be controlled by
13 A.C.A. § 25-15-213. The parties shall have the right to cross-examine
14 witnesses. Official notice may be taken of judicially cognizable facts and of
15 generally recognized technical or scientific facts within the Commissioner's
16 specialized knowledge. The parties may bind themselves by stipulation.

17 (g) The organizers shall be responsible for procuring and paying for a
18 verbatim record of the proceeding. It will be the duty of the organizers to
19 furnish at least one (1) copy of the transcript to the Commissioner free of
20 charge.

21 (h) The Commissioner shall render his decision in writing, at or after a
22 hearing, which decision shall include the Commissioner's findings of fact
23 and conclusions of law.

24 (i)(1) The time for filing a petition for judicial review under the
25 Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the
26 date the final decision of the Commissioner is mailed or delivered, in written
27 form, to the parties desiring to appeal.

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

30

31 SECTION 13. Trust Companies Chartered Under Prior Law.

32 The charter of a corporation which was previously a trust company
33 incorporated under any laws of this state prior to the adoption of the
34 Arkansas Banking Code of 1997 may be converted to a state trust company under
35 this Act, if the charter, or evidence satisfactory to the Commissioner that
36 such corporation is still in existence and in good standing, is presented to

1 the Department within six (6) months of enactment of this Act for substitution
2 of a charter issued under this Act.

3

4 SECTION 14. Amendment of State Trust Company Articles of Association.

5 (a) A state trust company that has been granted a charter under Section
6 9 of this Act or a predecessor statute may amend or restate its articles of
7 association for any lawful purpose, including the creation of authorized but
8 unissued shares in one or more classes or series.

9 (b) An amendment authorizing the issuance of shares in series must
10 contain:

11 (1) the designation of each series and of any variations in the
12 preferences, imitations, and relative rights among series to the extent that
13 the preferences, limitations, and relative rights are to be established in the
14 articles of association; and

15 (2) a statement of any authority to be vested in the board to
16 establish series and determine the preferences, limitations, and relative
17 rights of each series.

18 (c) Amendment or restatement of the articles of association of a state
19 trust company and approval of the board and shareholders must be made or
20 obtained in accordance with provisions of the Arkansas Business Corporation
21 Act for the amendment or restatement of articles of incorporation except as
22 otherwise provided by this Act or regulations adopted under this Act. The
23 original and one copy of the articles of amendment or restated articles of
24 association must be filed with the Commissioner for approval. Unless the
25 submission presents novel or unusual questions, the Commissioner shall approve
26 or reject the amendment or restatement within thirty (30) days after the date
27 the Commissioner considers the submission informationally complete and
28 accepted for filing. The Commissioner may require the submission of
29 additional information as considered necessary to an informed decision to
30 approve or reject any amendment or restatement or articles of association
31 under this section.

32 (d) If the Commissioner finds that the amendment or restatement
33 conforms to law and any conditions imposed by the Commissioner, and any
34 required filing fee has been paid, the Commissioner shall:

35 (1) endorse the face of the original and copy with the date of
36 approval and the word "Approved";

1 (2) file the original in the Department's records; and
2 (3) deliver a certified copy to the amendment or restatement to
3 the state trust company.

4 (e) An amendment or restatement, if approved, takes effect on the date
5 of approval, unless the amendment or restatement provides for a different
6 effective date.

7

8 SECTION 15. Establishing a Series of Shares.

9 (a) If the articles of association expressly give the board authority
10 to establish series and determine the preferences, limitations, and relative
11 rights of each series of Shares, the board may do so only on compliance with
12 this section and any regulations adopted under this act.

13 (b) A series of shares may be established in the manner provided by the
14 provisions of the Arkansas Business Corporation Act as if the state trust
15 company were a domestic corporation, but the shares of the series may not be
16 issued and sold except upon compliance with this section. The state trust
17 company shall file the original and one copy of the Articles of Amendment
18 required by the Arkansas Business Corporation Act with the Commissioner.
19 Unless the submission presents novel or unusual questions, the Commissioner
20 shall approve or reject the series within thirty (30) days after the date the
21 Commissioner considers the submission informationally complete and accepted
22 for filing. The Commissioner may require the submission of additional
23 information as considered necessary to an informed decision.

24 (c) If the Commissioner finds that the interests of the clients and
25 creditors of the state trust company will not be adversely affected by the
26 series, that the series otherwise conforms to law and any conditions imposed
27 by the Commissioner, and that any required filing fee has been paid, the
28 Commissioner shall:

29 (1) endorse the face of the original and copy of the statement
30 with the date of approval and the word "Approved";

31 (2) file the original in the Department's records; and

32 (3) deliver a certified copy of the statement to the state trust
33 company.

34

35 SECTION 16. Change in Outstanding Capital and Surplus.

36 (a) A state trust company may not reduce or increase its outstanding

1 capital through dividend, redemption, issuance of shares or otherwise, without
2 the prior approval of the Commissioner, except as permitted by this section or
3 regulations adopted under this act.

4 (b) Unless otherwise restricted by regulations, prior approval is not
5 required for an increase in capital accomplished through:

6 (1) issuance of shares of common stock for cash;

7 (2) declaration and payment of pro rata share dividends as
8 defined in the Arkansas Business Corporation Act; or

9 (3) adoption by the board of a resolution directing that all or
10 part of undivided profits be transferred to capital.

11 (c) Prior approval is not required for a decrease in surplus caused by
12 incurred losses in excess of undivided profits.

13

14 SECTION 17. Capital Notes or Debentures.

15 (a) With the prior written approval of the Commissioner, any state
16 trust company may, at any time, through action of its board, and without
17 requiring action of its shareholders, issue and sell its capital notes or
18 debentures, which must be subordinate to the claims of depositors and may be
19 subordinate to other claims, including the claims of other creditors or
20 classes of creditors or the shareholders.

21 (b) Capital notes or debentures may be convertible into shares of any
22 class or series. The issuance and sale of convertible capital notes or
23 debentures are subject to satisfaction of preemptive rights, if any, to the
24 extent provided by law.

25 (c) Without the prior written approval of the Commissioner, interest
26 due or principal repayable on outstanding capital notes or debentures may not
27 be paid by a state trust company when the state trust company is in hazardous
28 condition or insolvent, as determined by the Commissioner, or to the extent
29 that payment will cause the state trust company to be in hazardous condition
30 or insolvent.

31 (d) The amount of any outstanding capital notes or debentures that meet
32 the requirements of this section and are subordinated to unsecured creditors
33 of the state trust company may be included in equity capital of the state
34 trust company for purposes of determining hazardous condition or insolvency,
35 and for such other purposes as may be provided by regulations adopted under
36 this Act.

1

2 SECTION 18. Private Trust Company.

3 (a) A private trust company engaging in the trust business in this
4 state shall comply with each and every provision of this Act applicable to a
5 trust company unless expressly exempted therefrom in writing by the
6 Commissioner pursuant to this section or by regulation adopted by the
7 Commissioner.

8 (b) A private trust company or proposed private trust company may
9 request in writing that it be exempted from specified provisions of Sections
10 5(k), 6(b), 7(a) and (b), 10(a), 22, 26(b), (c) and (d), 27 and 28 of this
11 Act. The Commissioner may grant the exemption in whole or in part if the
12 Commissioner finds that the private trust company does not and will not
13 transact business with the general public. For purposes of this section,

14 (1) "Transact business with the general public" means any sales,
15 solicitations, arrangements, agreements, or transactions to provide trust or
16 other business services, whether or not for a fee, commission, or any other
17 type of remuneration, with any client that is not a family member or a sole
18 proprietorship, partnership, joint venture, association, trust, estate,
19 business trust, or other company that is not one hundred percent (100%) owned
20 by one or more family members.

21 (2) "Family member" means any individual who is related within
22 the fourth degree of affinity or consanguinity to an individual or individuals
23 who control a private trust company or which is controlled by one or more
24 trusts or charitable organizations established by such individual or
25 individuals; and

26 (3) All individuals who control a private trust company or
27 establish trusts or charitable organizations controlling such private trust
28 company must be related within the second degree of affinity or consanguinity.

29 (c) At the expense of the private trust company, the Commissioner may
30 examine or investigate the private trust company in connection with an
31 application for exemption. Unless the application presents novel or unusual
32 questions, the Commissioner shall approve the application for exemption or set
33 the application for hearing not later than sixty (60) days after the date the
34 Commissioner considers the application complete and accepted for filing. The
35 Commissioner may require the submission of additional information as
36 considered necessary to an informed decision.

1 (d) Any exemption granted under this section may be made subject to
2 conditions or limitations imposed by the Commissioner consistent with this
3 Act.

4 (e) The Commissioner may adopt regulations defining other circumstances
5 that do not constitute transaction of business with the public, specifying the
6 provisions of this Act that are subject to an exemption request, and
7 establishing procedures and requirements for obtaining, maintaining, or
8 revoking exempt status.

9

10 SECTION 19. Requirements for a Private Trust Company.

11 (a) Application.

12 (1) A private trust company requesting an exemption from the
13 provisions of this Act pursuant to Section 18 shall file an application with
14 the Commissioner containing the following:

15 (A) a non-refundable application fee on an amount not less
16 than three thousand dollars (\$3,000.00) nor more than five thousand dollars
17 (\$5,000.00), as set by regulations issued by the Commissioner;

18 (B) a detailed statement under oath showing the private
19 trust company's assets and liabilities as of the end of the month previous to
20 the filing of the application;

21 (C) a statement under oath of the reason for requesting the
22 exemption;

23 (D) a statement under oath that the private trust company
24 is not currently transacting business with the public and that the company
25 will not conduct business with the public without the prior written permission
26 of the Commissioner;

27 (E) the current street mailing address and telephone number
28 of the physical location in this state at which the private trust company will
29 maintain its books and records, together with a statement under oath that the
30 address given is true and correct and is not a U.S. Postal Service post office
31 box or a private mail box, postal box, or mail drop; and

32 (F) listing of the specific provisions of the Act for which
33 the request for exemption is made.

34 (2) The Commissioner shall not approve a private trust company
35 exemption unless the application is completed as required in paragraph (1) of
36 this section.

1 (b) Requirements.

2 To maintain status as an exempt private trust company under this
3 Act, the private trust company shall comply with the following:

4 (A) An exempt private trust company shall not transact
5 business with the public.

6 (B) An exempt private trust company shall file an annual
7 certification that it is maintaining the conditions and limitations of its
8 exempt status. This annual certification shall be filed on a form provided by
9 the Commissioner and be accompanied by a fee set by regulations issued by the
10 Commissioner. The annual certification shall be filed on or before June 30 of
11 each year. No annual certification shall be valid unless it bears an
12 acknowledgment stamped by the Department. The Department shall have thirty
13 (30) days from the date of receipt to return a copy of the acknowledged annual
14 certification to the private trust company. The burden shall be on the exempt
15 private trust company to notify the Department of any failure to return an
16 acknowledged copy of any annual certification within the thirty (30) day
17 period. The Commissioner may examine or investigate the private state trust
18 company periodically as necessary to verify the certification.

19 (C) An exempt private trust company shall comply with the
20 principal office provisions of Section 72 of this Act and with the address and
21 telephone requirements of subsection (a)(1)(E) of this section.

22 (D) the exempt private trust company shall pay all
23 applicable corporate franchise taxes.

24 (c) Change of Control. Control of an exempt private trust company may
25 not be transferred or sold with exempt status. In any change of control, the
26 acquiring control person must comply with the provisions of this Act and the
27 exempt status of the private trust company shall automatically terminate upon
28 the effective date of the transfer. A separate application for exempt status
29 must be filed if the acquiring person wishes to obtain or continue an
30 exemption pursuant to this section.

31 (d) Authority to Revoke. The Commissioner shall have authority to
32 revoke the exempt status of a private trust company in the following
33 circumstances:

34 (1) the exempt private trust company makes a false statement
35 under oath on any document required to be filed by the Act or by any
36 regulation promulgated by the Commissioner; or

1 (2) the exempt private trust company fails to submit to an
2 examination as required by Section 84 of this Act; or

3 (3) the exempt private trust company withholds requested
4 information from the Commissioner; or

5 (4) the exempt private trust company violates any provision of
6 this section applicable to exempt private trust companies.

7 (e) Notification of Revocation of Exemption. If the Commissioner
8 determines from examination or other credible evidence that an exempt private
9 trust company has violated any of the requirements of this section, the
10 Commissioner may by personal delivery or registered or certified mail, return
11 receipt requested, notify the exempt private trust company in writing that the
12 private trust company's exempt status has been revoked. The notification must
13 state grounds for the revocation with reasonable certainty. The notice must
14 state its effective date, which may not be sooner than five (5) calendar days
15 after the date the notification is mailed or delivered. The revocation takes
16 effect for the private trust company if the private trust company does not
17 request a hearing in writing before the effective date. After taking effect
18 the revocation is final and nonappealable as to that private trust company,
19 and the private trust company shall be subject to all of the requirements and
20 provisions of the Act applicable to non-exempt state trust companies.

21 (f) Compliance Period. A private trust company shall have five (5)
22 calendar days after the revocation is effective to comply with the provisions
23 of this Act from which it was formerly exempt. If, however, the Commissioner
24 determines, at the time of revocation, that the private trust company has been
25 engaging in or attempting to engage in acts intended or designed to deceive or
26 defraud the public, the Commissioner may shorten or eliminate, in the
27 Commissioner's sole discretion, the five (5) calendar days compliance period.

28 (g) Remedies for Failure to Comply. If the private trust company does
29 not comply with all of the provisions of this Act, including such
30 capitalization requirements as have been determined by the Commissioner as
31 necessary to assure the safety and soundness of the private trust company,
32 within the prescribed time period, the Commissioner may:

33 (1) institute any action or remedy prescribed by this Act, or any
34 applicable regulation or regulation, or

35 (2) refer the private trust company to the attorney general for
36 institution of a quo warranto proceeding to revoke the charter.

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SECTION 20. Conversion to Public Trust Company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to Section 18 hereof shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the Commissioner.

(b) The notificant may commence transacting business with the general public thirty (30) days after the date the Commissioner receives the notice, unless the Commissioner specifies another date.

(c) The thirty (30) day period of review may be extended by the Commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the Commissioner.

(d) The Commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the Commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this Act from which the notificant had been previously exempted pursuant to Section 18.

SECTION 21. Investment in State Trust Company Facilities.

(a) In this act, "state trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

1 (1) providing space for state trust company employees to perform
2 their duties and space for parking by state trust company employees and
3 customers;

4 (2) conducting trust business, including meeting the reasonable
5 needs and convenience of the state trust company's customers, computer
6 operations, document and other item processing, maintenance and record
7 retention and storage;

8 (3) holding, improving, and occupying as an incident to future
9 expansion of the state trust company's facilities; or

10 (4) conducting another activity authorized by regulations adopted
11 under this Act.

12 (b) Without the prior written approval of the Commissioner, a state
13 trust company may not directly or indirectly invest an amount in excess of its
14 capital and surplus in state trust company facilities, furniture, fixtures,
15 and equipment. Except as otherwise provided by regulations adopted under this
16 Act, in computing this limitation a state trust company:

17 (1) shall include:

18 (A) its direct investment in state trust company
19 facilities;

20 (B) any investment in equity or investment securities of a
21 company holding title to a facility used by the state trust company for the
22 purposes specified by subsection (a) of this section;

23 (C) any loan made by the state trust company to or on the
24 security of equity or investment securities issued by a company holding title
25 to a facility used by the state trust company; and

26 (D) any indebtedness incurred on state trust company
27 facilities by a company:

28 (i) that holds title to the facility;

29 (ii) that is an affiliate of the state trust company;

30 and

31 (iii) in which the state trust company is invested in
32 the manner described by paragraph (B) or (C) of this subdivision; and

33 (2) may exclude an amount included under subdivisions (1)(B)-(D)
34 of this subsection to the extent any lease of a facility from the company
35 holding title to the facility is capitalized on the books of the state trust
36 company.

1 (c) Real estate acquired under subsection (a)(3) of this section and
 2 not improved and occupied by the state trust company ceases to be a state
 3 trust company facility on the third anniversary of the date of its
 4 acquisition, unless the Commissioner on application grants written approval to
 5 further delay in the improvement and occupation of the property by the state
 6 trust company.

7 (d) A state trust company shall comply with generally accepted
 8 accounting principles, consistently applied, in accounting for its investment
 9 in and depreciation of state trust company facilities, furniture, fixtures,
 10 and equipment.

11

12 SECTION 22. Other Real Estate.

13 (a) A state trust company may not acquire real estate except:

14 (1) as permitted by Section 21 of this Act or as otherwise
 15 provided by this Act, including regulations adopted under this Act;

16 (2) if necessary to avoid or minimize a loss on a loan or
 17 investment previously made in good faith; or

18 (3) with the prior written approval of the Commissioner.

19 (b) To the extent reasonably necessary to avoid or minimize loss on
 20 real estate acquired as permitted by subsection (a) of this section, a state
 21 trust company may exchange real estate for other real estate or personal
 22 property, invest additional funds in or improve real estate acquired under
 23 this subsection or subsection (a) of this section, or acquire additional real
 24 estate.

25 (c) A state trust company shall dispose of any real estate subject to
 26 subsection (a)(1) and (2) of this section not later than:

27 (1) the fifth anniversary of the date:

28 (A) it was acquired, except as otherwise provided by
 29 regulations adopted under this Act; or

30 (B) it ceases to be used as a state trust company facility;
 31 or

32 (2) the third anniversary of the date it ceases to be a state
 33 trust company facility as provided by Section 21(c) of this Act.

34 (d) The Commissioner on application may grant one or more extensions of
 35 time for disposing of real estate if the Commissioner determines that:

36 (1) the state trust company has made a good faith effort to

1 dispose of the real estate; or

2 (2) disposal of the real estate would be detrimental to the state
3 trust company.

4

5 SECTION 23. Securities.

6 (a) A state trust company may invest its corporate funds in any type or
7 character of equity or investment securities subject to the limitations
8 provided by this section.

9 (b) Unless the Commissioner approves maintenance of a lesser amount in
10 writing, a state trust company must invest and maintain an amount equal to not
11 less than forty percent (40%) of the state trust company's capital under
12 Section 10 of this Act in unencumbered cash, cash equivalents, and readily
13 marketable securities.

14 (c) Subject to subsection (d) of this section, the total investment in
15 equity and investment securities of any one issuer, obligor, or maker, held by
16 the state trust company for its own account, may not exceed an amount equal to
17 twenty percent (20%) of the state trust company's capital base. The
18 Commissioner may authorize investments in excess of this limitation on written
19 application if the Commissioner concludes that:

20 (1) the excess investment is not prohibited by other applicable
21 law; and

22 (2) the safety and soundness of the requesting state trust
23 company is not adversely affected.

24 (d) Notwithstanding subsection (c) of this section, a state trust
25 company may purchase for its own account, without limitation and subject only
26 to the exercise of prudent judgment:

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

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

32 (3) Obligations the principal and interest of which are fully
33 guaranteed by the United States Government or an agency or an instrumentality
34 created by an act of the United States Congress and authorized thereby to
35 issue such guarantee;

36 (4) Obligations the principal and interest of which are fully

1 secured, insured, or covered by commitments or agreements to purchase by the
2 United States Government or an agency or instrumentality created by an act of
3 the United States Congress and authorized thereby to issue such commitments or
4 agreements;

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

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

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

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

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

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

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

27 (12) Securities of, or other interest in, any open-end type
28 investment company or investment trust registered under the Investment Company
29 Act of 1940, and which is defined as a "money market fund" under 17 CFR
30 §270.2a-7, provided that the portfolio of such investment company or
31 investment trust is limited principally to United States Government
32 obligations and to repurchase agreements fully collateralized by United States
33 Government obligations, and provided further that any such investment company
34 or investment trust shall take delivery of such collateral either directly or
35 through an authorized custodian.

36 (e) The Commissioner may adopt regulations to establish limits,

1 requirements, or exemptions other than those specified by this section for
2 particular classes or categories of investment, or limit or expand investment
3 authority for state trust companies for particular classes or categories of
4 securities or other property.

5

6 SECTION 24. Transactions in State Trust Company Shares.

7 (a) A state trust company may acquire its own shares if:

8 (1) the amount of its undivided profits is sufficient to fully
9 absorb the acquisition of the shares under regulatory accounting principles;
10 and

11 (2) the state trust company obtains the prior written approval of
12 the Commissioner.

13 (b) A state trust company shall not make loans upon the security of its
14 own shares.

15

16 SECTION 25. Subsidiaries.

17 (a) Except as otherwise provided by this act or regulations adopted
18 under this act, a state trust company may acquire or establish a subsidiary to
19 conduct any activity that may lawfully be conducted through the form of
20 organization chosen for the subsidiary.

21 (b) A state trust company may not invest more than an amount equal to
22 twenty percent (20%) of its capital base in a single subsidiary and may not
23 invest an amount in excess of forty percent (40%) of its capital base in all
24 subsidiaries. The amount of a state trust company's investment in a
25 subsidiary is the total amount of the state trust company's investment in
26 equity or investment securities issued by its subsidiary and any loans and
27 extensions of credit from the state trust company to its subsidiary. The
28 Commissioner may authorize investments in excess of these limitations on
29 written application if the Commissioner concludes that:

30 (1) the excess investment is not prohibited by other applicable
31 law; and

32 (2) the safety and soundness of the requesting state trust
33 company is not adversely affected.

34 (c) A state trust company that intends to acquire, establish, or
35 perform new activities through a subsidiary shall submit a letter to the
36 Commissioner describing in detail the proposed activities of the subsidiary.

1 (d) The state trust company may acquire or establish a subsidiary or
2 begin performing new activities in an existing subsidiary thirty (30) days
3 after the date the Commissioner receives the state trust company's letter,
4 unless the Commissioner specifies another date. The Commissioner may extend
5 the thirty (30) day period of review on a determination that the state trust
6 company's letter raises issues that require additional information or
7 additional time for analysis. If the period of review is extended, the state
8 trust company may acquire or establish the subsidiary, or perform new
9 activities in an existing subsidiary, only on prior written approval of the
10 Commissioner.

11 (e) A subsidiary of a state trust company is subject to regulation by
12 the Commissioner to the extent provided by this act or regulations adopted
13 under this act. In the absence of limiting regulations, the Commissioner may
14 regulate a subsidiary as if it were a state trust company.

15

16 SECTION 26. Mutual Funds.

17 (a) A state trust company may invest for its own account in equity
18 securities of an investment company registered under the Investment Company
19 Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) and the Securities Act of 1933 (15
20 U.S.C. Sec. 77a et seq.) if the portfolio of the investment company consists
21 wholly of investments in which the state trust company could invest directly
22 for its own account.

23 (b) If the portfolio of an investment company described in subsection
24 (a) of this section consists wholly of investments in which the state trust
25 company could invest directly without limitation under Section 23(d) of this
26 Act, the state trust company may invest in the investment company without
27 limitation.

28 (c) If the portfolio of an investment company described in subsection
29 (a) of this section contains any investment that is subject to the limits of
30 Section 23(c) of this Act, the state trust company may invest in the
31 investment company not more than an amount equal to twenty percent (20%) of
32 the state trust company's capital base. This provision does not apply to a
33 money market fund.

34 (d) In evaluating investment limits under this act of this Act, a state
35 trust company may not be required to combine:

36 (1) the state trust company's pro rata share of the securities of

1 an issuer in the portfolio of an investment company with the state trust
2 company's pro rata share of the securities of that issuer held by another
3 investment company in which the state trust company has invested; or
4 (2) the state trust company's own direct investment in the
5 securities of an issuer with the state trust company's pro rata share of the
6 securities of that issuer held by each investment company in which the state
7 trust company has invested under this section.

8

9 SECTION 27. Engaging in Commerce Prohibited.

10 Except as otherwise provided by this Act or regulations adopted under
11 this Act, a state trust company may not invest its funds in trade or commerce
12 by buying, selling, or otherwise dealing in goods or by owning or operating a
13 business not part of the state trust business, except as necessary to fulfil a
14 fiduciary obligation to a client.

15

16 SECTION 28. Lending Limits.

17 (a) A state trust company's total outstanding loans and extensions of
18 credit to a person other than an insider may not exceed an amount equal to
19 twenty percent (20%) of the state trust company's capital base.

20 (b) The aggregate loans and extensions of credit outstanding at any
21 time to insiders of the state trust company may not exceed an amount equal to
22 twenty percent (20%) of the state trust company's capital base. All covered
23 transactions between an insider and a state trust company must be engaged in
24 only on terms and under circumstances, including credit standards, that are
25 substantially the same as those for comparable transactions with a non-
26 insider.

27 (c) The Commissioner may adopt regulations to administer and carry out
28 this section, including regulations to establish limits, requirements, or
29 exemptions other than those specified by this section for particular classes
30 or categories of loans or extensions of credit, and establish collective
31 lending and investment limits.

32 (d) The Commissioner may determine whether a loan or extension of
33 credit putatively made to a person will be attributed to another person for
34 purposes of this section.

35 (e) A state trust company may not lend trust deposits, except that a
36 trustee may make a loan to a beneficiary of the trust if the loan is expressly

1 authorized or directed by the instrument or transaction establishing the
2 trust.

3 (f) An officer, director, or employee of a state trust company who
4 approves or participates in the approval of a loan with actual knowledge that
5 the loan violates this section is jointly and severally liable to the state
6 trust company for the lesser of the amount by which the loan exceeded
7 applicable lending limits or the state trust company's actual loss and remains
8 liable for that amount until the loan and all prior indebtedness of the
9 borrower to the state trust company has been fully repaid. The state trust
10 company may initiate a proceeding to collect an amount due under this
11 subsection at any time before the date the borrower defaults on the subject
12 loan or any prior indebtedness or before the fourth anniversary of that date.
13 A person that is liable for and pays amounts to the state trust company under
14 this subsection is entitled to an assignment of the state trust company's
15 claim against the borrower to the extent of the payments. For purposes of
16 this subsection, an officer, director, or employee of a state trust company is
17 presumed to know the amount of the state trust company's lending limit under
18 subsection (a) of this section and the amount of the borrower's aggregate
19 outstanding indebtedness to the state trust company immediately before a new
20 loan or extension of credit to that borrower.

21

22 SECTION 29. Lease Financing Transactions.

23 (a) Subject to regulations adopted under this Act, a state trust
24 company may become the owner and lessor of tangible personal property for
25 lease financing transactions on a net lease basis on the specific request and
26 for the use of a client. Without the written approval of the Commissioner to
27 continue holding property acquired for leasing purposes under this subsection,
28 the state trust company may not hold the property more than six months after
29 the date of expiration of the original or any extended or renewed lease period
30 agreed to by the client for whom the property was acquired or by a subsequent
31 lessee.

32 (b) Rental payments received by the trust company in a lease financing
33 transaction under this section are considered to be rent and not interest or
34 compensation for the use, forbearance, or detention of money. However, a
35 lease financing transaction is considered to be a loan or extension of credit
36 for purposes of Section 28 of this Act.

1

2 SECTION 30. Trust Deposit.3 (a) A state trust company may deposit trust funds with itself as an
4 investment if authorized by the settlor or the beneficiary provided:5 (1) it maintains as security for the deposits a separate fund of
6 securities, legal for trust investments, under control of a federal reserve
7 bank or other entity approved by the Commissioner, either in this state or
8 elsewhere;9 (2) the total market value of the security is at all times at
10 least equal to the amount of the deposit;11 (3) the separate fund is designated as such; and12 (4) the separate fund is maintained under the control of another
13 trust institution, bank or government agency.14 (b) A state trust company may make periodic withdrawals from or
15 additions to the securities fund required by subsection (a) of this section as
16 long as the required value is maintained. Income from the securities in the
17 fund belongs to the state trust company.18 (c) Security for a deposit under this section is not required for a
19 deposit under subsection (a) of this section to the extent the deposit is
20 insured by the Federal Deposit Insurance Corporation or its successor.

21

22 SECTION 31. Common Investment Funds.23 (a) A state trust company may establish common trust funds to provide
24 investment to itself as a fiduciary.25 (b) The Commissioner may adopt regulations to administer and carry out
26 this section, including but not limited to regulations to establish investment
27 and participation limitations, disclosure of fees, audit requirements, limit
28 or expand investment authority for particular classes or categories of
29 securities or other property, advertising, exemptions, and other requirements
30 that may be necessary to carry out this section.

31

32 SECTION 32. Borrowing Limit.33 Except with the prior written approval of the Commissioner, a state
34 trust company may not have liabilities outstanding exceeding an amount equal
35 to three times its capital base.

36

1 SECTION 33. Pledge of Assets.

2 A state trust company may not pledge or create a lien on any of its
3 assets except to secure the repayment of money borrowed or as specifically
4 authorized or required by Section 30 of this Act, or by regulations adopted
5 under this act. An act, deed, conveyance, pledge, or contract in violation of
6 this section is void.

7

8 SECTION 34. Acquisition of Control.

9 (a) Except as expressly otherwise permitted, a person may not without
10 the prior written approval of the Commissioner directly or indirectly acquire
11 control of a state trust company through a change in a legal or beneficial
12 interest in voting securities of a state trust company or a corporation or
13 other entity owning voting securities of a state trust company.

14 (b) This act does not prohibit a person from negotiating to acquire,
15 but not acquiring, control of a state trust company or a person that controls
16 a state trust company.

17 (c) This section does not apply to:

18 (1) the acquisition of securities in connection with the exercise
19 of a security interest or otherwise in full or partial satisfaction of a debt
20 previously contracted for in good faith if the acquiring person files written
21 notice of acquisition with the Commissioner before the person votes the
22 securities acquired;

23 (2) the acquisition of voting securities in any class or series
24 by a controlling person who has previously complied with and received approval
25 under this act or who was identified as a controlling person in a prior
26 application filed with and approved by the Commissioner;

27 (3) an acquisition or transfer by operation of law, will, or
28 intestate succession if the acquiring person files written notice of
29 acquisition with the Commissioner before the person votes the securities
30 acquired;

31 (4) a transaction exempted by the Commissioner by regulation or
32 order because the transaction is not within the purposes of this act or the
33 regulation of which is not necessary or appropriate to achieve the objectives
34 of this act.

35

36 SECTION 35. Application Regarding Acquisition of Control.

1 (a) The proposed transferee seeking approval to acquire control of a
 2 state trust company or a person that controls a state trust company must file
 3 with the Commissioner:

4 (1) an application in the form prescribed by the Commissioner;

5 (2) the filing fee in an amount not less than fifteen hundred
 6 dollars (\$1,500.00) and not more than three thousand dollars (\$3,000.00), as
 7 set by regulations issued by the Commissioner;

8 (3) all information required by regulation or that the
 9 Commissioner requires in a particular application as necessary to an informed
 10 decision to approve or reject the proposed acquisition.

11 (b) If the proposed transferee includes any group of individuals or
 12 entities acting in concert, the information required by the Commissioner may
 13 be required of each member of the group.

14 (c) If the proposed transferee is not an Arkansas resident, an Arkansas
 15 company, or an out-of-state company qualified to do business in this state, a
 16 written consent to service of process on a resident of this state in any
 17 action or suit arising out of or connected with the proposed acquisition.

18 (d) The proposed transferee must give public notice of the application,
 19 its date of filing, and the identity of each participant, in the form
 20 specified by the Commissioner, through publication by one (1) insertion in a
 21 newspaper published in the City of Little Rock and having a general and
 22 substantially statewide circulation, promptly after the Commissioner accepts
 23 the application as complete.

24

25 SECTION 36. Hearing and Decision on Acquisition of Control.

26 (a) Not later than sixty (60) days after the application is officially
 27 filed, the Commissioner may approve the application or set the application for
 28 hearing. If the Commissioner sets a hearing, the Commissioner shall conduct a
 29 hearing as he considers advisable and consistent with governing statutes and
 30 regulations.

31 (b) Based on the record, the Commissioner may issue an order denying an
 32 application if:

33 (1) the acquisition would substantially lessen competition, be in
 34 restraint of trade, result in a monopoly, or be in furtherance of a
 35 combination or conspiracy to monopolize or attempt to monopolize the trust
 36 industry in any part of this state, unless:

1 (A) the anti-competitive effects of the proposed
2 acquisition are clearly outweighed in the public interest by the probable
3 effect of acquisition in meeting the convenience and needs of the community to
4 be served; and

5 (B) the proposed acquisition is not in violation of law of
6 this state or the United States;

7 (2) the financial condition of the proposed transferee, or any
8 member of a group composing the proposed transferee, might jeopardize the
9 financial stability of the state trust company being acquired;

10 (3) plans or proposals to operate, liquidate, or sell the state
11 trust company or its assets are not in the best interests of the state trust
12 company;

13 (4) the experience, ability, standing, competence,
14 trustworthiness, and integrity of the proposed transferee, or any member of a
15 group comprising the proposed transferee, are insufficient to justify a belief
16 that the state trust company will be free from improper or unlawful influence
17 or interference with respect to the state trust company's operation in
18 compliance with law;

19 (5) the state trust company will be insolvent, in a hazardous
20 condition, not have adequate capitalization, or not be in compliance with the
21 laws of this state after the acquisition;

22 (6) the proposed transferee has failed to furnish all information
23 pertinent to the application reasonably required by the Commissioner; or

24 (7) the proposed transferee is not acting in good faith.

25 (c) If an application filed under this section is approved by the
26 Commissioner, the transaction may be consummated. Any written commitment from
27 the proposed transferee offered to and accepted by the Commissioner as a
28 condition that the application will be approved is enforceable against the
29 state trust company and the transferee and is considered for all purposes an
30 agreement under this Act.

31

32 SECTION 37. Appeal from Adverse Decision.

33 (a) If a hearing has been held, the Commissioner has entered an order
34 denying the application, and the order has become final, the proposed
35 transferee may appeal the final order by filing a petition for judicial review
36 under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

1 (1) The time for filing such a petition for judicial review shall
2 run from the date the final decision of the Commissioner is mailed or
3 delivered, in written form, to the parties desiring to appeal.

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

6 (b) The filing of an appeal under this section does not stay the order
7 of the Commissioner.

8

9 SECTION 38. Objection to Other Transfer.

10 This act may not be construed to prevent the Commissioner from
11 investigating, commenting on, or seeking to enjoin or set aside a transfer of
12 voting securities that evidence a direct or indirect interest in a state trust
13 company, regardless of whether the transfer is included within this act, if
14 the Commissioner considers the transfer to be against the public interest.

15

16 SECTION 39. Civil Enforcement; Criminal Penalties.

17 (a) The Commissioner may bring any appropriate civil action against any
18 person who the Commissioner believes has committed or is about to commit a
19 violation of this act or a regulation or order of the Commissioner pertaining
20 to this act.

21 (b) A person who knowingly fails or refuses to file the application
22 required by Section 35 of this Act commits an offense. An offense under this
23 subsection is a Class A misdemeanor.

24

25 SECTION 40. Voting Securities Held by State Trust Company.

26 (a) Voting securities of a state trust company held by the state trust
27 company in a fiduciary capacity under a will or trust, whether registered in
28 its own name or in the name of its nominee, may not be voted in the election
29 of directors or managers or on a matter affecting the compensation of
30 directors, managers, officers, or employees of the state trust company in that
31 capacity, unless :

32 (1) under the terms of the will or trust, the manner in which the
33 voting securities are to be voted may be determined by a donor or beneficiary
34 of the will or trust and the donor or beneficiary actually makes the
35 determination in the matter at issue;

36 (2) the terms of the will or trust expressly direct the manner in

1 which the securities must be voted to the extent that no discretion is vested
2 in the state trust company as fiduciary; or

3 (3) the securities are voted solely by a co-fiduciary that is not
4 an affiliate of the state trust company, as if the co-fiduciary were the sole
5 fiduciary.

6 (b) Voting securities of a state trust company that cannot be voted
7 under this section are considered to be authorized but unissued for purposes
8 of determining the procedures for and results of the affected vote.

9

10 SECTION 41. Bylaws.

11 Each state trust company shall adopt bylaws and may amend its bylaws
12 from time to time for the purposes and in accordance with the procedures set
13 forth in the Arkansas Business Corporation Act.

14

15 SECTION 42. Board of Directors.

16 (a) The board of a state trust company shall be governed by the
17 provisions of The Arkansas Business Corporation Act, provided that the Board
18 must consist of not fewer than three directors, the majority of whom must be
19 residents of this state.

20 (b) Unless the Commissioner consents otherwise in writing, a person may
21 not serve as director of a state trust company if:

22 (1) the state trust company incurs an unreimbursed loss
23 attributable to a charged-off obligation of or holds a judgment against the
24 person or an entity that was controlled by the person at the time of funding
25 and at the time of default on the loan that gave rise to the judgment or
26 charged-off obligation;

27 (2) the person has been convicted of a felony; or,

28 (3) the person has violated a provision of this Act, relating to
29 loan of trust funds and purchase or sale of trust property by the trustee, and
30 the violation has not been corrected.

31 (c) If a state trust company does not elect directors prior to sixty
32 (60) days after the date of its regular annual meeting, the Commissioner may
33 commence a proceeding to appoint a receiver pursuant to Section 64 of this Act
34 to operate the state trust company and elect directors or managers, as
35 appropriate. If the conservator is unable to locate or elect persons willing
36 and able to serve as directors, the Commissioner may close the state trust

1 company for liquidation.

2 (d) A vacancy on the board that reduces the number of directors to
3 fewer than three must be filed not later than ninety (90) days after the date
4 the vacancy occurs. If the vacancy has not been filled upon the expiration of
5 ninety (90) days following the date the vacancy occurs, the Commissioner may
6 commence a proceeding to appoint a receiver pursuant to Section 64 of this Act
7 to operate the state trust company and elect a board of not fewer than three
8 persons to resolve the vacancy. If the conservator is unable to locate or
9 elect three persons willing and able to serve as directors, the Commissioner
10 may close the state trust company for liquidation.

11 (e) Before each term to which a person is elected to serve as a
12 director of a state trust company, the person shall submit an affidavit for
13 filing in the minutes of the state trust company stating that the person, to
14 the extent applicable:

15 (1) accepts the position and is not disqualified from serving in
16 the position;

17 (2) will not violate or knowingly permit an officer, director, or
18 employee of the state trust company to violate any law applicable to the
19 conduct of business of the state trust company; and

20 (3) will diligently perform the duties of the position.

21 (f) An advisory director is not considered a director if the advisory
22 director:

23 (1) is not elected by the shareholders of the state trust
24 company;

25 (2) does not vote on matters before the board or a committee of
26 the board and is not counted for purposes of determining a quorum of the board
27 or committee; and

28 (3) provides solely general policy advice to the board.

29

30 SECTION 43. Officers.

31 The board shall annually elect the officers of the state trust company,
32 who serve at the pleasure of the board. The state trust company must have a
33 principal executive officer primarily responsible for the execution of board
34 policies and operation of the state trust company and an officer responsible
35 for the maintenance and storage of all corporate books and records of the
36 state trust company and for required attestation of signatures. The board may

1 appoint other officers of the state trust company as the board considers
2 necessary. The duties of any two or more officers may be combined by the
3 Board and held by one person.

4

5 SECTION 44. Certain Criminal Offenses.

6 (a) An officer, director, employee or shareholder of a state trust
7 company commits an offense if the person knowingly:

8 (1) conceals information or a fact, or removes, destroys, or
9 conceals a book or record of the state trust company for the purpose of
10 concealing information or a fact from the Commissioner or an agent of the
11 Commissioner; or

12 (2) for the purpose of concealing, removes or destroys any book
13 or record of the state trust company that is material to a pending or
14 anticipated legal or administrative proceeding.

15 (b) An officer, director or employee of a state trust company commits
16 an offense if the person knowingly makes a false entry in the books or records
17 or in any report or statement of the state trust company.

18 (c) An offense under this section is a Class D felony.

19

20 SECTION 45. Transactions with Management and Affiliates.

21 (a) Without the prior approval of a disinterested majority of the board
22 recorded in the minutes, or if a disinterested majority cannot be obtained the
23 prior written approval of the a majority of the disinterested directors and
24 the Commissioner, a state trust company may not directly or indirectly;

25 (1) sell or lease an asset of the state trust company to an
26 officer, director, or principal shareholder of the state trust company or an
27 affiliate of the state trust company; or

28 (2) purchase or lease an asset in which an officer, director or
29 principal shareholder of the state trust company or an affiliate of the state
30 trust company has an interest; or

31 (3) subject to Section 28 of this Act, extend credit to an
32 officer, director, or principal shareholder of the state trust company or an
33 affiliate of the state trust company.

34 (b) Notwithstanding subsection (a) of this section, a lease transaction
35 described in subsection (a)(2) of this section involving real property may not
36 be consummated, renewed, or extended without the prior written approval of the

1 Commissioner. For purposes of this subsection only, an affiliate of the state
2 trust company does not include a subsidiary of the state trust company.

3 (c) Subject to Section 28 of this Act, a state trust company may not
4 directly or indirectly extend credit to an employee, officer, director or
5 principal shareholder of the state trust company or an affiliate of the state
6 trust company, unless the extension of credit:

7 (1) is made on substantially the same terms, including interest
8 rates and collateral, as those prevailing at the time for comparable
9 transactions by the state trust company with persons who are not employees,
10 officers, directors, principal shareholders, or affiliates of the state trust
11 company;

12 (2) does not involve more than the normal risk of repayment or
13 present other unfavorable features; and

14 (3) the state trust company follows credit underwriting
15 procedures that are not less stringent than those applicable to comparable
16 transactions by the state trust company with persons who are not employees,
17 officers, directors, principal shareholders or affiliates of the state trust
18 company.

19 (d) An officer or director of the state trust company who knowingly
20 participates in or knowingly permits a violation of this section shall be
21 guilty of a Class D felony.

22 (e) The Commissioner may adopt regulations to administer and carry out
23 this section, including regulations to establish limits, requirements, or
24 exemptions other than those specified by this section for particular
25 categories of transactions.

26

27 SECTION 46. Fiduciary Responsibility.

28 The board of a state trust company is responsible for the proper
29 exercise of fiduciary powers by the state trust company and each matter
30 pertinent to the exercise of fiduciary powers, including:

31 (1) the determination of policies;

32 (2) the investment and disposition of property held in a
33 fiduciary capacity; and

34 (3) the direction and review of the actions of each officer,
35 employee, and committee used by the state trust company in the exercise of its
36 fiduciary powers.

1

2 SECTION 47. Recordkeeping.

3 A state trust company shall keep its fiduciary records separate and
4 distinct from other records of the state trust company. The fiduciary records
5 must contain all material information relative to each account as appropriate
6 under the circumstances.

7

8 SECTION 48. Bonding Requirements.

9 (a) The board of a state trust company shall require protection and
10 indemnity for clients in reasonable amounts established by regulations adopted
11 under this act, against dishonesty, fraud, defalcation, forgery, theft, and
12 other similar insurable losses, with corporate insurance or surety companies:

13 (1) authorized to do business in this state; or

14 (2) acceptable to the Commissioner and otherwise lawfully
15 permitted to issue the coverage against those losses in this state.

16 (b) Except as otherwise provided by regulation, coverage required under
17 subsection (a) of this section must include each director, officer and
18 employee of the state trust company without regard to whether the person
19 receives salary or other compensation.

20 (c) A state trust company may apply to the Commissioner for permission
21 to eliminate the bonding requirement of this section for a particular
22 individual. The Commissioner shall approve the application if the
23 Commissioner finds that the bonding requirement is unnecessary or burdensome.
24 Unless the application presents novel or unusual questions, the Commissioner
25 shall approve the application or set the application for hearing not later
26 than sixty (60) days after the date the Commissioner considers the application
27 complete and accepted for filing.

28

29 SECTION 49. Reports of Apparent Crime.

30 A trust company that is the victim of a robbery, has a shortage of
31 corporate or fiduciary funds in excess of five thousand dollars (\$5,000.00),
32 or is the victim of an apparent or suspected misapplication of its corporate
33 or fiduciary funds or property in any amount by a director, officer, or
34 employee shall report such robbery, shortages or apparent or suspected
35 misapplication to the Commissioner within forty-eight (48) hours after the
36 time it is discovered. The initial report may be oral if the report is

1 promptly confirmed in writing. The trust company or a director, officer,
2 employee, or agent is not subject to liability for defamation or another
3 charge resulting from information supplied in the report.

4

5 SECTION 50. Merger Authority.

6 (a) With the prior written approval of the Commissioner, a state trust
7 company may merge or consolidate with a state bank to the same extent as a
8 state bank under the Arkansas Banking Code or with another person to the same
9 extent as a business corporation under the Arkansas Business Corporation Act,
10 subject to this act.

11 (b) Implementation of a plan of merger by a trust company and a state
12 bank, approval of the board, and shareholders of the parties must be made or
13 obtained as provided by the Arkansas Banking Code as if the state trust
14 company were a state bank, except as otherwise provided by regulations adopted
15 under this act.

16 (c) Implementation of the plan of merger with a person other than a
17 state bank, approval of the board and shareholders of the parties must be made
18 or obtained as provided by the Arkansas Business Corporation Act as if the
19 state trust company were a domestic corporation and all other parties to the
20 merger were foreign corporations and other entities, except as otherwise
21 provided by regulations adopted under this act.

22

23 SECTION 51. Merger Application.

24 (a) The original articles of merger, a number of copies of the articles
25 of merger equal to the number of surviving, new, and acquiring entities, and
26 an application in the form required by the Commissioner must be filed with the
27 Commissioner. The Commissioner shall investigate the condition of the merging
28 parties. The Commissioner may require the submission of additional information
29 as considered necessary to an informed decision.

30 (b) The Commissioner may approve the merger if:

31 (1) each resulting state trust company will be solvent and have
32 adequate capitalization for its business and location;

33 (2) each resulting state trust company has in all respects
34 complied with the statutes and regulations relative to the organization of a
35 state trust company;

36 (3) all fiduciary obligations and liabilities of each state trust

1 company that is a party to the merger have been properly discharged or
2 otherwise lawfully assumed or retained by a state trust company or other
3 fiduciary;

4 (4) each surviving, new, or acquiring person that is not
5 authorized to engage in the trust business will not engage in the trust
6 business and has in all respects complied with the laws of this state; and
7 (5) all conditions imposed by the Commissioner have been
8 satisfied or otherwise resolved.

9

10 SECTION 52. Approval of Commissioner.

11 (a) If the Commissioner approves the merger and finds that all required
12 filing fees and investigative costs have been paid, the Commissioner shall:

13 (1) endorse the face of the original and each copy with the date
14 of approval and the word "Approved";

15 (2) file the original in the Department's records; and

16 (3) deliver a certified copy of the articles of merger to each
17 surviving, new, or acquiring entity.

18 (b) A merger is effective on the date of approval, unless the merger
19 agreement provides and the Commissioner consents to a different effective
20 date.

21

22 SECTION 53. Rights of Dissenters to Mergers.

23 A shareholder may dissent from the merger to the extent and by following
24 the procedure provided by the Arkansas Business Corporation Act or regulations
25 adopted under this Act.

26

27 SECTION 54. Authority to Purchase assets of Another Trust Institution.

28 (a) Subject to the provisions of this Section 54, a state trust company
29 may purchase assets of another state trust company or trust-related assets of
30 another trust institution, including the right to control accounts established
31 with the trust institution. Except as otherwise expressly provided by this
32 Act or any other applicable statutes, the purchase of all or part of the
33 assets of the trust institution does not make the purchasing state trust
34 company responsible for any liability or obligation of the selling trust
35 institution that is not expressly assumed by the purchasing state trust
36 company. Except as otherwise provided by this Act, this act does not govern or

1 prohibit the purchase by a trust institution of all or part of the assets of a
2 corporation or other entity that is not a trust institution.

3 (b) An application in the form required by the Commissioner must be
4 filed with the Commissioner for any acquisition of all or substantially all of
5 (i) the assets of a state trust company or (ii) the trust assets of another
6 trust institution by a state trust company. The Commissioner shall
7 investigate the condition of the purchaser and seller and may require the
8 submission of additional information as considered necessary to make an
9 informed decision. The Commissioner shall approve the purchase if:

10 (1) the acquiring state trust company will be solvent, not in a
11 hazardous condition and have sufficient capitalization for its business and
12 location;

13 (2) the acquiring state trust company has complied with all
14 applicable statutes and regulations including without limitation any
15 applicable requirements of Sections 78 and 79 of this Act;

16 (3) all fiduciary obligations and liabilities of the parties have
17 been properly discharged or otherwise assumed by the acquiring state trust
18 company;

19 (4) all conditions imposed by the Commissioner have been
20 satisfied or otherwise resolved; and

21 (5) all fees and costs have been paid.

22 (c) A purchase requiring an application pursuant to section 54(b) is
23 effective on the date of approval, unless the purchase agreement provides for,
24 and the Commissioner consents to, a different effective date.

25 (d) The acquiring state trust company shall succeed by operation of
26 law to all of the rights, privileges and obligations of the selling trust
27 institution under each account included in the assets acquired.

28

29 SECTION 55. Sale of Assets.

30 (a) The board of a state trust company, with the Commissioner's
31 approval, may cause a state trust company to sell all or substantially all of
32 its assets, including the right to control accounts established with the trust
33 company, without shareholder approval if the Commissioner finds:

34 (1) the interests of the state trust company's clients,
35 depositors, and creditors are jeopardized because of insolvency or imminent
36 insolvency of the state trust company; and

1 (2) the sale is in the best interest of the state trust company's
 2 clients and creditors; and

3 (3) the Federal Deposit Insurance Corporation or its successor
 4 approves the transaction unless the deposits of the state trust company are
 5 not insured.

6 (b) A sale under this section must include an assumption and promise by
 7 the buyer to pay or otherwise discharge:

8 (1) all of the state trust companies liabilities to clients and
 9 depositors;

10 (2) all of the state trust company's liabilities for salaries of
 11 the state trust company's employees incurred before the date of the sale;

12 (3) obligations incurred by the Commissioner arising out of the
 13 supervision or sale of the state trust company; and

14 (4) fees and assessments due the Department.

15 (c) This section does not limit the incidental power of a state trust
 16 company to buy and sell assets in the ordinary course of business.

17 (d) This section does not affect the Commissioner's right to take
 18 action under any other law. The sale by a trust company of all or
 19 substantially all of its assets with shareholder approval is deemed a
 20 voluntary dissolution and liquidation and shall be governed by A.C.A. §23-49-
 21 119.

22

23 SECTION 56. Required Vote of Shareholders.

24 A state trust company may go into voluntary liquidation and be closed,
 25 and may surrender its charter and franchise as a corporation of this state by
 26 the affirmative votes of its shareholders owning a majority of its voting
 27 stock.

28

29 SECTION 57. Corporate Procedure.

30 Shareholder action to liquidate a state trust company shall be taken at
 31 a meeting of the shareholders duly called by resolution of the board of
 32 directors, written notice of which, stating the purpose of the meeting, shall
 33 be mailed to each shareholder, or in case of a shareholder's death, to such
 34 shareholder's legal representative, addressed to the shareholder's last known
 35 residence not less than ten (10) days prior to the date of such meeting. If
 36 stockholders shall, by the required vote, elect to liquidate a trust company,

1 a certified copy of all proceedings of the meeting at which such action shall
2 have been taken, attested by an officer of the trust company, shall be
3 transmitted to the Commissioner for approval.

4

5 SECTION 58. Authority to Liquidate; Publication.

6 If the Commissioner shall approve the liquidation, the Commissioner
7 shall issue to the state trust company under the Commissioner's seal, a permit
8 for such purpose. No such permit shall be issued by the Commissioner until
9 the Commissioner shall be satisfied that provision has been made by the state
10 trust company to satisfy and pay off all creditors. If not so satisfied, the
11 Commissioner shall refuse to issue a permit, and shall be authorized to take
12 possession of the state trust company and its assets and business, and hold
13 the same and liquidate the state trust company in the manner provided in this
14 Act. When the Commissioner shall approve the voluntary liquidation of a state
15 trust company, the directors of said state trust company shall cause to be
16 published in a newspaper with a substantially statewide circulation published
17 in the city of Little Rock, Arkansas, a notice that the state trust company is
18 closing down its affairs and going into liquidation, and notify its creditors
19 to present their claims for payment. Such notice shall be published once a
20 week for four consecutive weeks.

21

22 SECTION 59. Examination and Reports.

23 When any state trust company shall be in process of voluntary
24 liquidation, it shall be subject to examination by the Commissioner, and shall
25 furnish such reports from time to time as may be called for by the
26 Commissioner.

27

28 SECTION 60. Unclaimed Property.

29 All unclaimed property remaining in the hands of a liquidated state
30 trust company shall be subject to the provisions of the Uniform Disposition of
31 Unclaimed Property Act, A.C.A. §18-28-201 et seq.

32

33 SECTION 61. Sale or Transfer of Property.

34 Upon the approval of the Commissioner, any state trust company may sell
35 and transfer to any other trust institution, whether state or federally
36 chartered, all of its assets of every kind upon such terms as may be agreed

1 upon and approved by the Commissioner and by a majority vote of its board of
 2 directors. A certified copy of the minutes of any meeting at which such
 3 action is taken, attested by an officer of the trust company, together with a
 4 copy of the contract of sale and transfer, shall be filed with the
 5 Commissioner. Whenever voluntary liquidation shall be approved by the
 6 Commissioner or the sale and transfer of the assets of any state trust company
 7 shall be approved by the Commissioner, the charter of such state trust company
 8 shall be canceled, subject, however, to its continued existence, as provided
 9 by this Act and the general law relative to corporations.

10

11 SECTION 62. When Commissioner May Take Charge.

12 The Commissioner may forthwith take possession of the business and
 13 property of any state trust company to which this Act is applicable whenever
 14 it shall appear that such state trust company:

15 (1) Has violated its charter or any laws applicable thereto;

16 (2) Is conducting its business in an unauthorized or unsafe
 17 manner;

18 (3) Is in an unsafe or unsound condition to transact its
 19 business;

20 (4) Has an impairment of its capital;

21 (5) Is in a hazardous condition;

22 (6) Has become otherwise insolvent;

23 (7) Has neglected or refused to comply with the terms of a duly
 24 issued lawful order of the Commissioner;

25 (8) Has refused, upon proper demand, to submit its records,
 26 affairs, and concerns for inspection and examination of a duly appointed or
 27 authorized examiner of the Commissioner;

28 (9) Is employing officers who have refused to be examined upon
 29 oath regarding its affairs; or

30 (10) Has made a voluntary assignment of its assets to trustees.

31

32 SECTION 63. Directors May Act.

33 Any state trust company may place its assets and business under the
 34 control of the Commissioner for liquidation by a resolution of a majority of
 35 its directors or members upon notice to the Commissioner, and, upon taking
 36 possession of the state trust company, the Commissioner, or duly appointed

1 agent, shall retain possession thereof until such state trust company shall be
 2 authorized by the Commissioner to resume business or until the affairs of said
 3 state trust company shall be fully liquidated as herein provided. No state
 4 trust company shall make any general assignment for the benefit of its
 5 creditors except by surrendering possession of its assets to the Commissioner,
 6 as herein provided. Whenever any state trust company for any reason shall
 7 suspend operations for any length of time, the state trust company shall,
 8 immediately upon such suspension of operations, be deemed in the possession of
 9 the Commissioner and subject to liquidation hereunder.

10

11 SECTION 64. Application of Arkansas Banking Code.

12 When the Commissioner, or duly appointed agent, shall take possession of
 13 any state trust company under Sections 62 or 63 hereof, the Commissioner or
 14 agent shall proceed with the dissolution and liquidation of the state trust
 15 company under the procedures established for the dissolution and liquidation
 16 of state banks under the Arkansas Banking Code.

17

18 SECTION 65. Companies Authorized to Act as a Fiduciary.

19 (a) No company shall act as a fiduciary in this state except:

20 (1) A state trust company;

21 (2) A state bank;

22 (3) An association organized under the laws of this state and
 23 authorized to act as a fiduciary pursuant to A.C.A. §23-37-101 et seq.

24 (4) A national bank having its principal office in this state and
 25 authorized by the Comptroller of the Currency to act as a fiduciary pursuant
 26 to 12 U.S.C. 92a.

27 (5) A federally chartered savings association having its
 28 principal office in this state and authorized by its federal chartering
 29 authority to act as a fiduciary.

30 (6) A subsidiary trust company authorized to act as a fiduciary
 31 under A.C.A. §23-47-801 et seq.

32 (7) An out-of-state bank with a branch in this state established
 33 or maintained pursuant to The Arkansas Interstate Banking and Branching Act
 34 (A.C.A. §23-48-901 et seq.) or a trust office licensed by the Commissioner
 35 pursuant to this Act.

36 (8) An out-of-state trust company with a trust office licensed by

1 the Commissioner pursuant to this Act.

2 (b) No company shall engage in an unauthorized trust activity.

3

4 SECTION 66. Activities Not Requiring a Charter, Etc.

5 Notwithstanding any other provision of this Act, a company does not
6 engage in the trust business or in any other business in a manner requiring a
7 charter or license under this Act or in an unauthorized trust activity by:

8 (a) acting in a manner authorized by law and in the scope of authority
9 as an agent of a trust institution with respect to an activity which is not an
10 unauthorized trust activity;

11 (b) rendering a service customarily performed as an attorney or law
12 firm in a manner approved and authorized by the Supreme Court or the laws of
13 this state;

14 (c) acting as trustee under a deed of trust delivered only as security
15 for the payment of money or for the performance of another act;

16 (d) receiving and distributing rents and proceeds of sale as a licensed
17 real estate broker on behalf of a principal in a manner authorized by the Real
18 Estate License Law, A.C.A. 17-42-101 et seq.;

19 (e) engaging in a securities transaction or providing an investment
20 advisory service as a licensed and registered broker-dealer, investment
21 advisor or registered representative thereof, provided the activity is
22 regulated by the Arkansas Securities Department or the Securities and Exchange
23 Commission;

24 (f) engaging in the sale and administration of an insurance product by
25 an insurance company or agent licensed by the Arkansas Insurance Department to
26 the extent that the activity is regulated by the Arkansas Insurance
27 Department;

28 (g) engaging in the lawful sale of prepaid funeral benefits under a
29 permit issued by Arkansas Insurance Department under Arkansas Prepaid Funeral
30 Benefits Law, A.C.A. §23-40-101 et seq. or engaging in the lawful business of
31 maintaining a perpetual care cemetery trust pursuant to A.C.A. §20-17-904 or a
32 permanent maintenance fund for perpetually maintained cemeteries under A.C.A.
33 §20-17-1001 et seq.;

34 (h) acting as trustee under a voting trust as provided by A.C.A. §4-26-
35 706 or A.C.A. § 4-27-730;

36 (i) engaging in other activities expressly excluded from the

1 application of this Act by regulations issued by the Commissioner;

2 (j) rendering services customarily performed by a public accountant or
3 a certified public accountant in a manner authorized by the Arkansas State
4 Board of Public Accountancy; or

5 (k) provided the company is a trust institution and is not barred by
6 order of the Commissioner from engaging in a trust business in this state
7 pursuant to Section 82(b) hereof, (1) marketing or soliciting in this state
8 through the mails, telephone, any electronic means or in person with respect
9 to acting or proposing to act as a fiduciary outside of this state, (2)
10 delivering money or other intangible assets and receiving the same from a
11 client or other person in this state; or (3) accepting or executing outside of
12 this state a trust of any client or otherwise acting as a fiduciary outside of
13 this state for any client.

14

15 SECTION 67. Trust Business of State Trust Institution.

16 (a) A state trust institution may act as a fiduciary or otherwise
17 engage in a trust business in this or any other state or foreign country,
18 subject to complying with applicable laws of such state or foreign country, at
19 an office established and maintained pursuant to this Act, at a branch or at
20 any other authorized location other than an office or branch.

21 (b) In addition, a state trust institution may conduct any activities
22 at any office outside this state that are permissible for a trust institution
23 chartered by the host state where the office is located, except to the extent
24 such activities are expressly prohibited by the laws of this state or by any
25 regulation or order of the Commissioner applicable to the state trust
26 institution; provided, however, that the Commissioner may waive any such
27 prohibition if he or she determines, by order or regulation, that the
28 involvement of out-of-state offices of state trust institutions in particular
29 activities would not threaten the safety or soundness of such state trust
30 institutions.

31

32 SECTION 68. Trust Business of Out-Of-State Trust Institution.

33 An out-of-state trust institution which establishes or maintains one or
34 more offices in this state under this Act may conduct any activity at each
35 such office which would be authorized under the laws of this state for a state
36 trust institution to conduct at such an office.

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SECTION 69. Name of Trust Institution.

A state trust company or out-of-state trust institution may register any name with the Commissioner in connection with establishing a principal office or trust office in this state pursuant to this Act, except that the Commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

SECTION 70. Trust Business.

A state trust company or a state bank may:

(a) perform any act as a fiduciary;

(b) engage in any trust business;

(c) exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this Act; and

(d) if a state trust company, exercise any other power authorized by Section 4 of this Act.

SECTION 71. Branches and Offices of State Trust Institutions.

(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this Act and at a branch.

(b) Notwithstanding the foregoing subsection (a), a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted to be conducted at such an office by the laws of the host state applicable to trust institutions chartered by the host state.

SECTION 72. State Trust Company Principal Office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) Each executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal

1 office is to be changed, and a copy of the resolution adopted by the board
2 authorizing the change.

3 (d) The change of principal office shall take effect thirty (30) days
4 after the date the Commissioner receives the notice pursuant to paragraph (c)
5 above, unless the Commissioner establishes another date or unless prior to
6 such day the Commissioner notifies the state trust company that it must
7 establish to the satisfaction of the Commissioner that the relocation is
8 consistent with the original determination made under Section 6(b) of this Act
9 for the establishment of a state trust company at that location, in which
10 event the change of principal office shall take effect when approved by the
11 Commissioner.

12

13 SECTION 73. Trust Office.

14 (a) A state trust institution may establish or acquire and maintain
15 trust offices anywhere in this state. A state trust institution desiring to
16 establish or acquire and maintain such an office shall file a written notice
17 with the Commissioner setting forth the name of the state trust institution,
18 the location of the proposed additional trust office and a general description
19 of the surrounding area, whether the location will be owned or leased, furnish
20 a copy of the resolution adopted by the board authorizing the additional trust
21 office, general description of the activities to be conducted, an estimate of
22 the cost of the trust office and pay the filing fee, if any, prescribed by the
23 Commissioner.

24 (b) The notificant may commence business at the additional trust office
25 thirty (30) days after the date the Commissioner receives the notice, unless
26 the Commissioner specifies another date.

27 (c) The thirty (30) day period of review may be extended by the
28 Commissioner on a determination that the written notice raises issues that
29 require additional information or additional time for analysis. If the period
30 of review is extended, the state trust institution may establish the
31 additional office only on prior written approval by the Commissioner.

32 (d) The Commissioner may deny approval of the additional office if the
33 Commissioner finds that the notificant lacks sufficient financial resources to
34 undertake the proposed expansion without adversely affecting its safety or
35 soundness or that the proposed office would be contrary to the public
36 interest.

1

2 SECTION 74. Out-of-State Offices.

3 (a) A state bank, a state trust company or a savings association
4 chartered under the laws of this state may establish and maintain a new trust
5 office or acquire and maintain an office in a state other than this state.
6 Such a trust institution desiring to establish or acquire and maintain an
7 office in another state under this section shall file a notice on a form
8 prescribed by the Commissioner, which shall set forth the name of the trust
9 institution, the location of the proposed office and a general description of
10 the surrounding area, whether the location will be owned or leased, and
11 whether the laws of the jurisdiction where the office will be located permit
12 the office to be maintained by the trust institution, furnish a copy of the
13 resolution adopted by the board authorizing the out-of-state office, and pay
14 the filing fee, if any, prescribed by the Commissioner.

15 (b) The notificant may commence business at the additional office
16 thirty (30) days after the date the Commissioner receives the notice, unless
17 the Commissioner specifies another date.

18 (c) The thirty (30) day period of review may be extended by the
19 Commissioner on a determination that the written notice raises issues that
20 require additional information or additional time for analysis. If the period
21 of review is extended, the trust institution may establish the additional
22 office only on prior written approval by the Commissioner.

23 (d) The Commissioner may deny approval of the additional office if the
24 Commissioner finds that the notificant lacks sufficient financial resources to
25 undertake the proposed expansion without adversely affecting its safety or
26 soundness or that the proposed office would be contrary to the public
27 interest. In acting on the notice, the Commissioner shall consider the views
28 of the appropriate bank supervisory agencies.

29

30 SECTION 75. Trust Business at a Branch or Trust Office.

31 An out-of-state trust institution may act as a fiduciary in this state
32 or engage in a trust business at an office in this state only if it maintains
33 (i) a trust office in this state as permitted by this act or (ii) a branch in
34 this state.

35

36 SECTION 76. Establishing an Interstate Trust Office.

1 (a) An out-of-state trust institution that does not operate a trust
2 office in this state and that meets the requirements of this act may establish
3 and maintain a new trust office in this state.

4 (b) An out-of-state trust institution may not establish a new trust
5 office in this state unless a similar institution chartered under the laws of
6 this state to act as a fiduciary, is permitted to establish a new trust office
7 that may engage in activities substantially similar to those permitted to
8 trust offices of out-of-state trust institutions under Section 75 of this act,
9 in the state where such out-of-state trust institution has its principal
10 office.

11
12 SECTION 77. Acquiring an Interstate Trust Office.

13 (a) An out-of-state trust institution that does not operate a trust
14 office in this state and that meets the requirements of this act may acquire
15 and maintain a trust office in this state.

16 (b) No out-of-state trust institution may maintain a trust office in
17 this state unless a similar institution chartered under the laws of this state
18 to act as a fiduciary is permitted to acquire and maintain a trust office
19 through an acquisition of a trust office in the state where such out of state
20 trust institution has its principal office and may engage in activities
21 substantially similar to those permitted to trust offices of out-of-state
22 trust institutions under Section 75 of this act, in the state where such out-
23 of-state trust institution has its principal office.

24
25 SECTION 78. Requirement of Notice.

26 An out-of-state trust institution desiring to establish and maintain a
27 new trust office or acquire and maintain a trust office in this state pursuant
28 to this act shall provide, or cause its home state regulator to provide,
29 written notice of the proposed transaction to the Commissioner on or after the
30 date on which the out-of-state trust institution applies to the home state
31 regulator for approval to establish and maintain or acquire the trust office.
32 The filing of such notice shall be preceded or accompanied by a copy of the
33 resolution adopted by the board authorizing the additional office and the
34 filing fee, if any, prescribed by the Commissioner.

35
36 SECTION 79. Conditions for Approval.

1 (a) No trust office of an out-of-state trust institution may be
2 acquired or established in this state under this act unless:

3 (1) The out-of-state trust institution shall have confirmed in
4 writing to the Commissioner that for as long as it maintains a trust office in
5 this state, it will comply with all applicable laws of this state.

6 (2) The notificant shall have provided satisfactory evidence to
7 the Commissioner of compliance with (i) any applicable requirements of A.C.A.
8 §4-27-1501 et seq. and (ii) the applicable requirements of its home state
9 regulator for acquiring or establishing and maintaining such office.

10 (3) The Commissioner, acting within sixty (60) days after
11 receiving notice under Section 78, shall have certified to the home state
12 regulator that the requirements of this act have been met and the notice has
13 been approved or, if applicable, that any conditions imposed by the
14 Commissioner pursuant to paragraph (b) below have been satisfied.

15 (b) The out-of-state trust institution may commence business at the
16 trust office sixty (60) days after the date the Commissioner receives the
17 notice unless the Commissioner specifies another date, provided, with respect
18 to an out-of-state trust institution that is not a depository institution and
19 for which the Commissioner shall have conditioned such approval on the
20 satisfaction by the notificant of any requirement applicable to a state trust
21 company pursuant to Section 6(b) or Section 10 of this Act, such institution
22 shall have satisfied such conditions and provided to the Commissioner
23 satisfactory evidence thereof.

24 (c) The sixty (60) day period of review may be extended by the
25 Commissioner on a determination that the written notice raises issues that
26 require additional information or additional time for analysis. If the period
27 of review is extended, the out-of-state trust institution may establish the
28 office only on prior written approval by the Commissioner.

29 (d) The Commissioner may deny approval of the office if the Commissioner
30 finds that the notificant lacks sufficient financial resources to undertake
31 the proposed expansion without adversely affecting its safety or soundness or
32 that the proposed office is contrary to the public interest. In acting on the
33 notice, the Commissioner shall consider the views of the appropriate bank
34 supervisory agencies.

35

36 SECTION 80. Additional Trust Offices.

1 An out-of-state trust institution that maintains a trust office in this
2 state under this act may establish or acquire additional trust offices or
3 representative trust offices in this state to the same extent that a state
4 trust institution may establish or acquire additional offices in this state
5 pursuant to the procedures for establishing or acquiring such offices set
6 forth in Section 73.

7

8 SECTION 81. Examinations; Periodic Reports; Cooperative Agreements;
9 Assessment of Fees.

10 (a) To the extent consistent with subsection (c) of this section, the
11 Commissioner may make such examinations of any office established and
12 maintained in this state pursuant to this act by an out-of-state trust
13 institution as the Commissioner may deem necessary to determine whether the
14 office is being operated in compliance with the laws of this state and in
15 accordance with safe and sound banking practices. The provisions of the
16 Arkansas Banking Code shall apply to such examinations.

17 (b) The Commissioner may require periodic reports regarding any out-of-
18 state trust institution that has established and maintained an office in this
19 state pursuant to this act. The required reports shall be provided by such
20 trust institution or by the home state regulator. Any reporting requirements
21 prescribed by the Commissioner under this subsection (b) shall be (i)
22 consistent with the reporting requirements applicable to state trust companies
23 and (ii) appropriate for the purpose of enabling the Commissioner to carry out
24 his or her responsibilities under this act.

25 (c) The Commissioner may enter into cooperative, coordinating and
26 information-sharing agreements with any other bank supervisory agencies or any
27 organization affiliated with or representing one or more bank supervisory
28 agencies with respect to the periodic examination or other supervision of any
29 office in this state of an out-of-state trust institution, or any office of a
30 state trust institution in any host state, and the Commissioner may accept
31 such a party's report of examination and report of investigation in lieu of
32 conducting his or her own examination or investigation.

33 (d) The Commissioner may enter into contracts with any bank supervisory
34 agency that has concurrent jurisdiction over a state trust institution or an
35 out-of-state trust institution maintaining an office in this state to engage
36 the services of such agency's examiners at a reasonable rate of compensation,

1 or to provide the services of the Commissioner's examiners to such agency at a
 2 reasonable rate of compensation. Any such contract shall be deemed a sole
 3 source contract under A.C.A. §19-11-232.

4 (e) The Commissioner may enter into joint examinations or joint
 5 enforcement actions with other bank supervisory agencies having concurrent
 6 jurisdiction over any office established and maintained in this state by an
 7 out-of-state trust institution or any office established and maintained by a
 8 state trust institution in any host state; provided, that the Commissioner may
 9 at any time take such actions independently if the Commissioner deems such
 10 actions to be necessary or appropriate to carry out his or her
 11 responsibilities under this act or to ensure compliance with the laws of this
 12 state; but provided further, that, in the case of an out-of-state trust
 13 institution, the Commissioner shall recognize the exclusive authority of the
 14 home state regulator over corporate governance matters and the primary
 15 responsibility of the home state regulator with respect to safety and
 16 soundness matters.

17 (f) Each out-of-state trust institution that maintains one or more
 18 offices in this state may be assessed and, if assessed, shall pay supervisory
 19 and examination fees in accordance with the laws of this state and regulations
 20 of the Commissioner. Such fees may be shared with other bank supervisory
 21 agencies or any organization affiliated with or representing one or more bank
 22 supervisory agencies in accordance with agreements between such parties and
 23 the Commissioner.

24

25 SECTION 82. Enforcement.

26 Consistent with the Arkansas Administrative Procedure Act, A.C.A. §25-
 27 15-201 et seq., after notice and opportunity for hearing,

28 (a) The Commissioner may determine:

29 (1) that an office maintained by an out-of-state trust
 30 institution in this state is being operated in violation of any provision of
 31 the laws of this state or in an unsafe and unsound manner; or

32 (2) that a company is engaged in an unauthorized trust activity.

33 In either event, the Commissioner shall have the authority to take all such
 34 enforcement actions as he or she would be empowered to take if the office or
 35 the company were a state trust company, including but not limited to issuing
 36 an order temporarily or permanently prohibiting the company from engaging in a

1 trust business in this state;

2 (b) In cases involving extraordinary circumstances requiring immediate
 3 action, the Commissioner may take any action permitted by Section 82
 4 (a) without notice or opportunity for hearing, but shall promptly afford a
 5 subsequent hearing upon an application to rescind the action taken. The
 6 Commissioner shall promptly give notice to the home state regulator of each
 7 enforcement action taken against an out-of-state trust institution and, to the
 8 extent practicable, shall consult and cooperate with the home state regulator
 9 in pursuing and resolving said enforcement action.

10

11 SECTION 83. Notice of Subsequent Merger, Closing, Etc.

12 Each out-of-state trust institution that maintains an office in this
 13 state pursuant to this act, or the home state regulator of such trust
 14 institution, shall give at least thirty (30) days prior written notice (or, in
 15 the case of an emergency transaction, such shorter notice as is consistent
 16 with applicable state or federal law) to the Commissioner of (i) any merger,
 17 consolidation, or other transaction that would cause a change of control with
 18 respect to such out-of-state trust institution or any bank holding company
 19 that controls such trust institution, with the result that an application
 20 would be required to be filed pursuant to the federal Change in Bank Control
 21 Act of 1978, as amended, 12 U.S.C. §1817(j), or the federal Bank Holding
 22 Company Act of 1956, as amended, 12 U.S.C. §1841 et seq., or any successor
 23 statutes thereto, (ii) any transfer of all or substantially all of the trust
 24 accounts or trust assets of the out-of-state trust institution to another
 25 person or (iii) the closing or disposition of any office in this state.

26

27 SECTION 84. Commissioner Shall Supervise and Examine Authorized Trust
 28 Institutions.

29 Every authorized trust institution shall be under the supervision of the
 30 Commissioner. The Commissioner shall execute and enforce through the
 31 Department and such other agents as are now or may hereafter be created or
 32 appointed, all laws which are now or may hereafter be enacted relating to
 33 authorized trust institutions. For the more complete and thorough enforcement
 34 of the provisions of this Act, the Commissioner is hereby empowered to
 35 promulgate such regulations not inconsistent with the provisions of the Act,
 36 as may, in his opinion, be necessary to carry out the provisions of the laws

1 relating to authorized trust institutions and as may be further necessary to
2 insure safe and conservative management of an authorized trust institution
3 under his supervision taking into consideration the appropriate interest of
4 the creditors, stockholders, and the public in their relations with such
5 authorized trust institutions. All authorized trust institutions doing
6 business under the provisions of this Act shall conduct their business in a
7 manner consistent with all laws relating to authorized trust institutions, and
8 all regulations and instructions that may be promulgated or issued by the
9 Commissioner.

10

11 SECTION 85. Examinations; Assessments.12 (a) The Commissioner may examine each state trust company every twenty-
13 four (24) months or more often as he determines is necessary to safeguard the
14 interests of the public and the safety and soundness of the institution.15 (b) Each state chartered trust company shall pay to the Department
16 within ten (10) days after notice from the Commissioner in January and July of
17 each year an assessment fee to defray the costs of examination and the costs
18 of operations of the Department which will be charged in accordance with an
19 assessment fee schedule approved by the Commissioner.20 (c) The Commissioner may accept examinations of a state trust company by
21 a federal or other governmental agency in lieu of an examination under this
22 section or may conduct examinations off a state trust company jointly or
23 concurrently with a federal or other governmental agency.

24

25 SECTION 86. Statements of Condition and Income.26 Each state trust company shall periodically file with the Commissioner a
27 copy of its statement of condition and income. The Commissioner shall have the
28 power to call for these reports whenever deemed necessary, in order to obtain
29 a full and complete knowledge of the condition of the trust company.

30

31 SECTION 87. Confidential Records.32 (a) The following records of the Department shall be confidential and
33 shall not be exhibited or revealed to the public except as stated in this
34 section or in accordance with Department regulations:35 (1) All examination reports filed with the Department;36 (2) All records disclosing information obtained from

1 examinations;

2 (3) Investigations and reports revealing facts concerning a state
3 trust company or the customers of such organization; and

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

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

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

15 (2) Official orders of the Department may be disclosed within the
16 discretion of the Commissioner if the Commissioner makes a determination that
17 such a disclosure would not give advantage to a competitor or adversely affect
18 the safety and soundness of the state trust company; and

19 (3) To federal financial institutions regulatory agencies and
20 financial institutions regulatory agencies of other states.

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

23

24 SECTION 88. Administrative Orders; Penalties for Violation.

25 (a) In addition to any other powers conferred by this Act, the
26 Commissioner shall have the power to:

27 (1) Order any authorized trust institution, or subsidiary
28 thereof, or any director, officer, or employee to cease and desist violating
29 any provision of this Act or any lawful regulation issued thereunder.

30 (2) Order any authorized trust institution, or subsidiary
31 thereof, or any director, officer, or employee to cease and desist from a
32 course of conduct that is unsafe or unsound and which is likely to cause
33 insolvency or dissipation of assets or is likely to jeopardize or otherwise
34 seriously prejudice the interests of the public in their relationship with the
35 authorized trust institution.

36 (3) Order any company to cease engaging in an unauthorized trust

1 activity.

2 (4) Enter any order pursuant to Section 82 of this Act.

3 (b) The Commissioner may impose a civil money penalty of not more than
4 one thousand dollars (\$1,000.00) for each violation by any authorized trust
5 institution, or subsidiary thereof, or any director, officer, or employee of
6 an order issued under subdivision (1) of subsection (a) of this section.
7 Provided further, the Commissioner may impose a civil money penalty of not
8 more than five hundred dollars (\$500.00) per day for each day that an
9 authorized trust institution, or subsidiary thereof, or any director, officer,
10 or employee violates a cease and desist order issued under subdivision (a)(2)
11 or (a)(3) of this section.

12

13 SECTION 89. Notice and Opportunity for Hearing.

14 Consistent with the Arkansas Administrative Procedure Act, A.C.A. § 25-
15 15-201 et seq., notice and opportunity for hearing shall be provided before
16 any of the foregoing actions shall be undertaken by the Commissioner.
17 Provided, however, in cases involving extraordinary circumstances requiring
18 immediate action, the Commissioner may take such action, but shall promptly
19 afford a subsequent hearing upon application to rescind the action taken.

20

21 SECTION 90. Subpoena Power and Examination Under Oath.

22 The Commissioner shall have the power to subpoena witnesses, compel
23 their attendance, require the production of evidence, administer oaths, and
24 examine any person under oath in connection with any subject related to a duty
25 imposed or a power vested in the Commissioner.

26

27 SECTION 91. Removal of Directors, Officers and Employees.

28 Consistent with Section 89 hereof, the Commissioner shall have the
29 right, and is hereby empowered, to require the immediate removal from office
30 of any officer, director, or employee of any authorized trust institution, who
31 shall be found to be dishonest, incompetent, or reckless in the management of
32 the affairs of the authorized trust institution, or who persistently violates
33 the laws of this State or the lawful orders, instructions, and regulations
34 issued by the Commissioner.

35

36 SECTION 92. Delegation and Fiduciary Responsibility.

1 (a) Any person acting as a trustee or as any other fiduciary under the
2 laws of this state may delegate any investment, management or administrative
3 function if such person exercises reasonable care, judgment and caution in:

4 (1) selecting the delegate, taking into account the delegate's
5 financial standing and reputation;

6 (2) establishing the scope and other terms of any delegation; and

7 (3) reviewing periodically the delegate's actions in order to
8 monitor overall performance and compliance with the scope and other terms of
9 the delegation.

10 (b) Notwithstanding any delegation permitted by subsection (a) of this
11 section, any person acting as a trustee, except as provided in Section 108, or
12 in any other fiduciary capacity under the laws of this state shall retain
13 responsibility for the due performance of any delegated fiduciary function.

14

15 SECTION 93. Affiliates.

16 (a) Any person acting as a trustee or in any other fiduciary capacity
17 under Section 92 may hire and compensate, as a delegate, an affiliate of such
18 person if:

19 (1) authorized by a trust or fiduciary instrument;

20 (2) authorized by court order;

21 (3) authorized in writing by each affected client; or

22 (4) the standards of Section 92 are satisfied.

23 (b) Fees paid to an affiliate shall be competitive with fees charged by
24 non-affiliates that provide substantially similar services.

25

26 SECTION 94. Fee Determination.

27 The compensation arrangement between a client and any person acting as a
28 trustee or as any other fiduciary pursuant to this Act shall be at arm's
29 length and any compensation pursuant to such arrangement shall be a reasonable
30 amount with respect to the services rendered.

31

32 SECTION 95. Disclosure of Potential Conflicts of Interest.

33 Any company, proposing to act as a trustee or in any other fiduciary
34 capacity pursuant to a written agreement to be entered into with a prospective
35 client after the effective date of this Act, which company has any potential
36 or actual conflict of interest which may reasonably be expected to have an

1 impact on the independence or judgment of such trustee or fiduciary, shall
2 disclose appropriate information concerning the actual or potential conflict
3 of interest prior to entering into any written or oral trust or fiduciary
4 agreement with such client or prospective client.

5

6 SECTION 96. Interests in Trust Institutions prohibited.

7 (a) Neither the Commissioner nor any employee or officer of the
8 Department who participates in the examination of a trust institution, or who
9 may be called upon to make an official decision or determination affecting the
10 operation of a trust institution, shall be an officer, director, attorney,
11 owner, or holder of stock in any state trust company, or any company which
12 owns or controls a state trust company, or receive, directly or indirectly,
13 any payment or gratuity from any such organizations. A person subject to this
14 section may not borrow money from a state trust company.

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

16 (1) Be a depositor in any trust institution that the Department
17 regulates; and

18 (2) Purchase trust or fiduciary services, other than credit
19 services, under rates and terms generally available to other customers of the
20 trust institution.

21

22 SECTION 97. Designation of Trustee.

23 Any person residing in this state may designate any trust institution to
24 act as a fiduciary on behalf of such person.

25

26 SECTION 98. Choice of Law Governing Trusts.

27 Any trust institution that maintains a trust office in this state and
28 its affected clients may designate either (i) this state, (ii) a state where
29 affected clients reside or (iii) the state where such trust institution has
30 its principal office as the state whose laws shall govern any written
31 agreement between such trust institution and its client or any instrument
32 under which the trust institution acts for a client.

33

34 SECTION 99. Choice of Law Governing Fiduciary Investments.

35 Any trust institution that maintains a trust office in this state and
36 its affected clients may designate either (i) this state, (ii) a state where

1 affected clients reside or (iii) the state where such trust institution has
2 its principal office as the state whose laws shall govern with respect to the
3 fiduciary investment standards applicable to any written agreement between
4 such trust institution or its client and any other instrument under which the
5 trust institution acts for a client.

6

7 SECTION 100. Prudent Investor Rule.

8 (a) Except as otherwise provided in subsection (b), a trustee who
9 invests and manages trust assets owes a duty to the beneficiaries of the trust
10 to comply with the prudent investor rule set forth in this act.

11 (b) The prudent investor rule, a default rule, may be expanded,
12 restricted, eliminated, or otherwise altered by the provisions of a trust. A
13 trustee is not liable to a beneficiary to the extent that the trustee acted in
14 reasonable reliance on the provisions of the trust.

15

16 SECTION 101. Standard of Care; Portfolio Strategy; Risk and Return
17 Objectives.

18 (a) A trustee shall invest and manage trust assets as a prudent
19 investor would, by considering the purposes, terms, distribution requirements,
20 and other circumstances of the trust. In satisfying this standard, the
21 trustee shall exercise reasonable care, skill and caution.

22 (b) A trustee's investment and management decisions respecting
23 individual assets must be evaluated not in isolation but in the context of the
24 trust portfolio as a whole and as a part of an overall investment strategy
25 having risk return objectives reasonably suited to the trust.

26 (c) Among circumstances that a trustee shall consider in investing and
27 managing trust assets are such of the following as are relevant to the trust
28 or its beneficiaries:

29 (1) general economic conditions;

30 (2) the possible effect of inflation or deflation;

31 (3) the expected tax consequences of investment decisions or
32 strategies;

33 (4) the role that each investment or course of action plays
34 within the overall trust portfolio, which may include financial assets,
35 interests in closely held enterprises, tangible and intangible personal
36 property, and real property;

1 (5) the expected total return from income and the appreciation of
2 capital;

3 (6) other resources of the beneficiaries;

4 (7) needs for liquidity, regularity of income, and preservation
5 or appreciation of capital; and

6 (8) an asset's special relationship or special value, if any, to
7 the purpose of the trust or to one or more of the beneficiaries.

8 (d) A trustee shall make a reasonable effort to verify facts relevant
9 to the investment and management of trust assets.

10 (e) A trustee may invest in any kind of property or type of investment
11 consistent with the standards of this act.

12 (f) A trustee who has special skills or expertise, or is named trustee
13 in reliance upon the trustee's representation that the trustee has special
14 skills or expertise, has a duty to use those special skills or expertise.

15

16 SECTION 102. Diversification.

17 A trustee shall diversify the investments of the trust unless the
18 trustee reasonably determines that, because of special circumstances, the
19 purposes of the trust are better served without diversifying.

20

21 SECTION 103. Duties at Inception of Trusteeship.

22 Within a reasonable time after accepting a trusteeship or receiving
23 trust assets, a trustee shall review the trust assets and make and implement
24 decisions concerning the retention and disposition of assets, in order to
25 bring the trust portfolio into compliance with the purposes, terms,
26 distribution requirements, and other circumstances of the trust, and with the
27 requirements of this act.

28

29 SECTION 104. Loyalty.

30 A trustee shall invest and manage the trust assets solely in the
31 interest of the beneficiaries. This duty is consistent with and shall not be
32 construed to abrogate the powers granted to banks and trust companies pursuant
33 to A.C.A. §28-71-104.

34

35 SECTION 105. Impartiality.

36 If a trust has two or more beneficiaries, the trustee shall act

1 impartially in investing and managing the trust assets, taking into account
2 any differing interests of the beneficiaries.

3

4 SECTION 106. Investment Costs.

5 In investing and managing trust assets, a trustee may only incur costs
6 that are appropriate and reasonable in relation to the assets, the purposes of
7 the trust, and the skills of the trustee.

8

9 SECTION 107. Reviewing Compliance.

10 Compliance with the prudent investor rule is determined in light of the
11 facts and circumstances existing at the time of a trustee's decision or
12 action and not by hindsight.

13

14 SECTION 108. (a) A trustee may delegate investment and management
15 functions that a prudent trustee of comparable skills could properly delegate
16 under the circumstances. The trustee shall exercise reasonable care, skill
17 and caution in:

18 (1) selecting an agent;

19 (2) establishing the scope and terms of the delegation,
20 consistent with the purposes and terms of the trust; and

21 (3) periodically reviewing the agent's actions in order to
22 monitor the agent's performance and compliance with the terms of the
23 delegation.

24 (b) In performing a delegated function, an agent owes a duty to the
25 trust to exercise reasonable care to comply with the terms of the delegation.

26 (c) A trustee who complies with the requirements of subsection (a) is
27 not liable to the beneficiaries or to the trust for the decisions or actions
28 of the agent to whom the function was delegated.

29 (d) By accepting the delegation of a trust function from the trustee of
30 a trust that is subject to the law of this State, an agent submits to the
31 jurisdiction of the courts of this State.

32

33 SECTION 109. Language Invoking Standard of Act.

34 The following terms or comparable language in the provisions of a trust,
35 unless otherwise limited or modified, authorizes any investment or strategy
36 permitted under this act: investments permissible by law for investment of

1 trust funds, legal investments, authorized investments, using the
 2 judgment and care under the circumstances then prevailing that persons of
 3 prudence, discretion, and intelligence exercise in the management of their own
 4 affairs, not in regard to speculation but in regard to the permanent
 5 disposition of their funds, considering the probable income as well as the
 6 probable safety of their capital, prudent man rule, prudent trustee
 7 rule, prudent person rule, and prudent investor rule.

8

9 SECTION 110. Application to Existing Trusts.

10 This act applies to trusts existing on and created after its effective
 11 date. As applied to trusts existing on its effective date, this act governs
 12 only decisions or actions occurring after that date.

13

14 SECTION 111. Uniformity of Application and Construction.

15 This act shall be applied and construed to effectuate its general
 16 purpose to make uniform the law with respect to the subject of this act among
 17 the States enacting it.

18

19 SECTION 112. Arkansas Code Annotated §23-45-104 is amended to read as
 20 follows:

21 23-45-104. Unauthorized activity as a financial institution --

22 Incorporation of industrial loan institutions prohibited -- Individuals and
 23 partnerships not to transact general commercial banking business.

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

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

29 (2) No certificate of incorporation for a new state bank in this
 30 state shall be issued, and no new state bank shall be permitted to engage in
 31 business within Arkansas except by permission of the Commissioner and upon
 32 approval of an application for a new state bank charter by the Commissioner
 33 and the Banking Board. The issuance of such certificate shall be within the
 34 sole discretion of the Commissioner and the Banking Board, and the giving of
 35 such permission shall be within the sole discretion of the Commissioner.

36 (3) Whenever it shall appear to the Commissioner that any person

1 is conducting business as a state bank without authority, the Commissioner may
 2 determine that such person is fully subject to the Commissioner's supervisory
 3 and regulatory powers, and to the provisions of the Arkansas Banking Code.

4 (4) No new industrial loan institution shall be incorporated in
 5 this state after the effective date of the Arkansas Banking Code.

6 (5) No partnership or individual, or other unincorporated person,
 7 may lawfully transact a general commercial banking business in this state
 8 after the effective date of the Arkansas Banking Code.

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

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

19

20 SECTION 113. Arkansas Code Annotated §23-49-101 is amended to read as
 21 follows:

22 "23-49-101. Definitions.

23 As used in this act:

24 (1) Chancery Court means the court that the Department has filed the
 25 notice of possession with, under this act. The Chancery Court will make a
 26 determination for sale of assets only and not a determination of whether or
 27 not to take charge of an institution under the Commissioner's supervision;

28 (2) Federal deposit insurance agency means an agency or instrumentality
 29 of the United States that insures to any extent the deposits of a depository
 30 institution, including the Federal Deposit Insurance Corporation ("FDIC");

31 (3) Insolvent institution means ~~a state bank or subsidiary trust~~
 32 ~~company~~ an institution that:

33 (A) Is, in the opinion of the Commissioner, incapable of or
 34 unlikely to meet the demands of creditors or depositors on a timely basis;

35 (B) Has liabilities in excess of the total value of its assets as
 36 determined by the Commissioner; or

1 (C) Has been advised by the FDIC of the FDIC's intention to
2 withdraw deposit insurance coverage;

3 (4) Institution means a state bank, state trust company or subsidiary
4 trust company.

5

6 SECTION 114. Arkansas Code Annotated §23-71-105 is amended to read as
7 follows:

8 "28-71-105. Standard of judgment and care - Prudent man rule.

9 In acquiring, investing, reinvesting, exchanging, retaining, selling,
10 and managing property held in a fiduciary capacity, other than trusts subject
11 to the Prudent Investor Rule as set forth in A.C.A. §§ [Sections 100 through
12 111 of the Arkansas Trust Institution Act, the fiduciary shall exercise the
13 judgment and care under the circumstances then prevailing which men of
14 prudence, discretion, and intelligence exercise in the management of their own
15 affairs, not in regard to speculation, but in regard to the permanent
16 disposition of their funds, considering the probable income as well as the
17 probable safety of their capital."

18

19 SECTION 115. All provisions of this act of a general and permanent
20 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
21 Code Revision Commission shall incorporate the same in the Code.

22

23 SECTION 116. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

28

29 SECTION 117. All laws and parts of laws in conflict with this act are
30 hereby repealed.

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