

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: H2/3/05*  
**A Bill**

HOUSE BILL 1264

5 By: Representatives Childers, Verkamp, Mahony  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO PERMIT THE BANK COMMISSIONER TO OBTAIN  
10 BACKGROUND CHECKS ON APPLICANTS; TO CLARIFY THE  
11 COMMISSIONER'S CEASE AND DESIST POWERS; AND FOR  
12 OTHER PURPOSES.  
13

14 **Subtitle**

15 TO PERMIT THE BANK COMMISSIONER TO  
16 OBTAIN BACKGROUND CHECKS ON APPLICANTS  
17 AND TO CLARIFY THE COMMISSIONER'S CEASE  
18 AND DESIST POWERS.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 23-46-205 is amended to read as follows:  
24 23-46-205. Bank Commissioner - Powers and duties.

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

31 (b)(1) The commissioner shall have the power to issue such rules and  
32 regulations as may be necessary or appropriate to carry out the intent and  
33 purposes of all those laws and to issue cease and desist orders against any  
34 financial institution, or an officer, director, or employee of any financial  
35 institution, found to be violating federal banking laws or regulations,  
36 violating the banking laws of this state or State Bank Department



1 regulations, violating any regulatory agreement, or jeopardizing the safety  
2 and soundness of any financial institution.

3 (2)(A) The commissioner may issue rules or regulations only with  
4 the approval and consent of the State Banking Board, but he shall have power  
5 to issue cease and desist orders upon his own motion.

6 (B) Nothing in this section shall be construed to curtail  
7 the commissioner's power to issue emergency rules and regulations with the  
8 approval and consent of the board.

9 (3)(A) Any person subject to a cease and desist order issued by  
10 the commissioner that shall refuse or fail to comply with the terms of the  
11 order may be assessed a monetary penalty for the failure to comply with the  
12 provisions of the cease and desist order after a ten-day notice given by the  
13 commissioner to the institution or person subject to the order.

14 (B) The amount of the monetary penalty shall not exceed  
15 one thousand dollars (\$1,000) per day of violation against each institution  
16 and each officer, director, or employee contributing to the institution's or  
17 individual's failure to comply with the provisions of the cease and desist  
18 order.

19 (C) Subject to such limitation, the amount of the monetary  
20 penalty shall be determined by the commissioner.

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

28 (A) Violating state or federal law, rules and regulations  
29 of a federal financial institution's regulatory agency, or department  
30 regulations;

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

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

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

35 (5)(A) Any person aggrieved and directly affected by an order of  
36 the commissioner issued pursuant to this section is entitled to judicial

1 review.

2 (B) A person so aggrieved may seek judicial review by  
3 petition to a ~~chancery~~ circuit court having jurisdiction in the matter.

4 (C) The petition must be filed within ~~seven (7)~~ thirty  
5 (30) days from the date of issuance of the order.

6 (D) If no petition for review is filed within thirty (30)  
7 days from the date of issuance of the order, the order may not be appealed  
8 and is permanently binding upon the person until terminated by the  
9 commissioner.

10 (c) Department regulations shall be distributed, in form and method  
11 selected by the commissioner, to all state banks chartered in the State of  
12 Arkansas.

13 (d) In addition to other powers, the commissioner shall have the power  
14 and authority to:

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

17 (2) Restrict withdrawal of deposits from state banks under  
18 extraordinary circumstances;

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

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

24 (5) Approve or disapprove applications for voluntary  
25 liquidations as provided in § 23-49-119;

26 (6) Define any term or phrase used in this chapter which is not  
27 defined by this chapter;

28 (7) Issue orders or declaratory statements, disseminate  
29 information, and otherwise exercise discretion to effectuate the purposes of  
30 this chapter and all laws described in subsection (a) of this section, and to  
31 interpret and implement the provisions of those laws consistently with such  
32 purposes;

33 (8) Authorize state banks to engage in any banking activity in  
34 which national banks are authorized or may hereafter be authorized by federal  
35 legislation or regulations to engage; ~~and~~

36 (9) Cooperate with federal financial institutions' regulatory

1 agencies; and

2 (10)(A) Perform pre-employment state criminal background checks  
3 through the Arkansas State Police and pre-employment federal criminal  
4 background checks through the Federal Bureau of Investigation.

5 (B) The federal background check shall include taking  
6 fingerprints of the applicant.

7 (C) The applicant shall sign a release authorizing the  
8 Arkansas State Police and the Federal Bureau of Investigation to disclose  
9 criminal history information about the applicant to the State Bank  
10 Department.

11 (D) The department shall treat the information as  
12 confidential and shall only disclose the information to the applicant.

13 (e)(1) As soon as practicable after acceptance of any application  
14 referred to either in this chapter or in department regulations for filing,  
15 regardless of whether the application is of a type referred to in § 23-46-  
16 403, and receipt of the filing fee therefor, the commissioner shall cause the  
17 merits of the application to be investigated.

18 (2) The investigation shall enable the commissioner to determine  
19 the fitness of the applicants and shall address all questions which bear  
20 directly or indirectly upon the appropriateness of granting the application  
21 and the need from the public standpoint for granting the application.

22 (3) To the extent that the commissioner deems it appropriate,  
23 the scope of the commissioner's investigation of any application may include:

24 (A) ~~the~~ The investigation of those matters described in §  
25 23-48-304 pertaining to applications for new state bank charters; and

26 (B)(i) The performance of state criminal background checks  
27 through the Arkansas State Police and federal criminal background checks  
28 through the Federal Bureau of Investigation.

29 (ii) The federal background check shall include the  
30 taking of fingerprints.

31 (iii) The background checks shall be used to  
32 determine the applicant's fitness to participate in the affairs of a state  
33 bank.

34 /s/ Childers, et al