

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 *As Enrolled: H2/3/05 H2/24/05 H3/10/05 S3/23/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1264

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5 By: Representatives Childers, Verkamp, Mahony

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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.

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Subtitle

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

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

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SECTION 1. Arkansas Code § 23-46-205 is amended to read as follows:

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

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

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

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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 on all
5 applicants selected for employment as an examiner with the State Bank
6 Department.

7 (B) The federal background check shall include taking
8 fingerprints of the applicant.

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

13 (D) The commissioner shall treat the information as
14 confidential and shall only disclose the information to the applicant.

15 (e)(1) As soon as practicable after acceptance of any application
16 referred to either in this chapter or in department regulations for filing,
17 regardless of whether the application is of a type referred to in § 23-46-
18 403, and receipt of the filing fee therefor, the commissioner shall cause the
19 merits of the application to be investigated.

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

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

26 (A) the The investigation of those matters described in §
27 23-48-304 pertaining to applications for new state bank charters; and

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

31 (ii) The federal background check shall include the
32 taking of fingerprints.

33 (iii) The applicant shall sign a release authorizing
34 the Arkansas State Police and the Federal Bureau of Investigation to disclose
35 criminal history information about the applicant to the State Bank
36 Department.

1 (iv) The commissioner shall treat the information as
2 confidential and shall only disclose the information to the applicant.

3 (v) The background checks shall be used to determine
4 the applicant's fitness to participate in the affairs of a state bank.

5 (f) A criminal background check obtained under this section shall be
6 destroyed by the commissioner within six (6) months of the commissioner's
7 receipt of the background check.

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9 /s/ Childers
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