

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 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 99

5 By: Senators Wilkinson, Baker, Salmon, Trusty
6 By: Representatives Thyer, Wells, Wills, Overbey, Pickett, Maloch, Rosenbaum, Walters, Wyatt,
7 Maxwell, J. Johnson, Breedlove, Dunn, Schulte, Glidewell
8
9

For An Act To Be Entitled

11 AN ACT TO REVISE THE ARKANSAS BANKING CODE; TO
12 PROVIDE PARITY BETWEEN THE STATE AND NATIONAL
13 BANK APPLICATION PROCESS; TO REDUCE APPLICATION
14 FEES; AND FOR OTHER PURPOSES.
15

Subtitle

17 TO REVISE THE ARKANSAS BANKING CODE; TO
18 PROVIDE PARITY BETWEEN THE STATE AND
19 NATIONAL BANK APPLICATION PROCESS; AND
20 TO REDUCE APPLICATION FEES.
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

25 SECTION 1. Arkansas Code § 23-48-701 is amended to read as follows:
26 23-48-701. Definitions.

27 As used in this subchapter:

28 (1)(A) "Full service branch" means a banking facility separate
29 from the main office of the bank at which all lawful banking activities may
30 be conducted as fully as in the main office.

31 (B) "Full service branch" includes a mobile facility that:

32 (i) Conducts banking business within the same county
33 as the main office or another full service branch of the bank;

34 (ii) Does not have a single, permanent site;

35 (iii) Does not remain within five (5) miles of any
36 banking location for more than two (2) business days;



1 (iv) Travels to various locations within the county
 2 to enable customers to conduct banking business; and

3 (v) Maintains a log of operations indicating the
 4 date and specific location of each stop; ~~and~~

5 (2) "Healthy bank" means a state bank whose financial condition
 6 satisfies the criteria established by State Bank Department regulation; and

7 ~~(2)-(3)~~ "Supervisory banking authority" means the Bank
 8 Commissioner for state banks and the United States Comptroller of the
 9 Currency for national banks.

10
 11 SECTION 2. Arkansas Code § 23-48-702 is amended to read as follows:

12 23-48-702. Establishment of full-service branches and limited-purpose
 13 offices - Locations.

14 (a)(1) No bank shall engage in core banking activities, receiving
 15 deposits, paying checks, or lending money at any location other than at a
 16 main banking office or full-service branch, except as otherwise permitted by
 17 law.

18 (2) Unless otherwise restricted by applicable law, banks may
 19 engage in permitted activities other than core banking activities at a main
 20 office, any branch, or a limited purpose office.

21 (3)(A) All communities and banking markets shall be presumed to
 22 be suitable for bank branches.

23 (B) The prior existence of a main or branch office of any
 24 bank in a community does not grant the bank any right or power to preclude
 25 any other bank from branching into the community.

26 (b)(1) Any Arkansas bank may establish a full-service branch, ~~provided~~
 27 ~~that~~ with the approval of its supervisory banking authority ~~approves its~~
 28 ~~application for the full-service branch.~~

29 (2) Any registered out-of-state bank may establish a full-
 30 service branch, ~~provided that~~ with the approval of the bank supervisory
 31 agencies with jurisdiction over the bank ~~approve its application for a full-~~
 32 ~~service branch.~~

33 (3) Full-service branches may be established as follows:

34 (A) An Arkansas bank may establish full-service branches
 35 anywhere within the state in which the establishing bank's main banking
 36 office is located;

1 (B) A state bank which relocates its main banking office
 2 may continue to use its former main banking office location as a full-service
 3 branch so long as the use as a banking facility is uninterrupted;

4 (C) Following the consummation of any bank merger
 5 transaction authorized under the Arkansas Banking Code of 1997, §§ 23-45-101
 6 et seq., 23-46-101 et seq., 23-47-101 et seq., 23-48-101 et seq., 23-49-101
 7 et seq., and 23-50-101 et seq., the resulting bank may establish, acquire, or
 8 operate additional branches at any location in the State of Arkansas, or in
 9 the case of an Arkansas bank, at any location within another state, where the
 10 main banking office of the bank which was a party to the merger could have
 11 established, acquired, or operated a full-service branch under applicable law
 12 if the bank had not been a party to the merger transaction, provided that
 13 full-service branches shall not be established if one (1) or more of the
 14 banks is an Arkansas bank which has a de novo charter;

15 (D) An Arkansas bank possessing a capital and surplus of
 16 one million dollars (\$1,000,000) or more may file an application with the
 17 Bank Commissioner for permission to exercise, upon such conditions as the
 18 commissioner may prescribe, the power to establish branches in foreign
 19 countries or dependencies or insular possessions of the United States and to
 20 act as fiscal agent for any governmental entity; and

21 (E) Notwithstanding any other provisions of state law
 22 regarding locations of full-service branches, any federal or state savings
 23 bank or association chartered and in operation prior to August 13, 2001, with
 24 branches in operation in one (1) or more states, may convert to a state bank
 25 in accordance with § 23-48-504 and may retain its branches, both in-state and
 26 out-of-state, as branches of the state bank.

27 (c)(1) None of the provisions of this section which restrict the
 28 locations in which full-service branches may be established shall be
 29 effective in emergency instances in which the purchase or assumption of the
 30 assets and liabilities of a failed bank becomes necessary due to state or
 31 federal regulatory action.

32 (2) The restrictions on the location of ~~mobile~~ banking services
 33 by an authorized bank may be suspended by the commissioner during a disaster,
 34 emergency, or other cause which disables the operation of a permanent
 35 location of the bank under the terms and conditions considered appropriate by
 36 the commissioner.

1 (d)(1) Any state bank may file ~~an application~~ a notice with the Bank
 2 Commissioner to relocate any existing full-service branch to another location
 3 then authorized by law.

4 (2) A fee of not less than ~~one thousand dollars (\$1,000)~~ three
 5 hundred dollars (\$300) nor more than ~~two thousand five hundred dollars~~
 6 ~~(\$2,500)~~, ~~as set~~ five hundred dollars (\$500) established by State Bank
 7 Department regulation, shall accompany the ~~application~~ notice.

8 (3) The ~~application~~ notice shall:

9 (A) Be filed not less than thirty (30) days prior to the
 10 proposed relocation; and

11 (B) ~~contain such~~ Contain any information concerning the
 12 new location ~~that~~ required by the commissioner ~~may require~~.

13 (4) The commissioner shall approve ~~such a~~ the relocation unless
 14 it is determined that the relocation is not ~~economically feasible or will not~~
 15 ~~serve the public convenience and necessity~~ consistent with the standards
 16 contained in § 23-48-703(a).

17 (5)(A) No ~~application~~ notice to relocate a full-service branch
 18 is required if:

19 (i)(a) A full-service branch is:

20 (1) Opened or built within the immediate
 21 neighborhood of an existing branch; or

22 (2) Opened, built, or established as a
 23 result of the consolidation of two (2) or more banks within the immediate
 24 neighborhood of an existing branch or main office of a bank.

25 (b) The existing branch or main office may be
 26 closed upon the opening of the new branch;

27 (ii) The nature of the business and customers of the
 28 branch are not substantially affected; and

29 (iii) A notice and filing fee of no more than two
 30 hundred fifty dollars (\$250) as prescribed by the commissioner is filed with
 31 the department.

32 (B) As used in subdivision (d)(5)(A) of this section,
 33 "within the immediate neighborhood" includes, but is not limited to:

34 (i) Across the street;

35 (ii) Around the corner;

36 (iii) Within two (2) blocks;

- 1 (iv) Within one thousand feet (1,000'); or
- 2 (v) In densely populated areas, within five thousand
- 3 feet (5,000').

4 (e)(1) Any bank may establish a limited-purpose office anywhere in the
 5 state to conduct noncore banking activities upon satisfaction of the notice
 6 requirement set forth in this subsection.

7 (2) As to each limited-purpose office which a bank proposes to
 8 establish or use, the bank shall give not fewer than thirty (30) days' prior
 9 written notice of its intention to establish or use the limited-purpose
 10 office to:

- 11 (A) The commissioner, in the case of a state bank;
- 12 (B) The home state regulator, in the case of a registered
- 13 out-of-state bank which is an out-of-state state-chartered bank; or
- 14 (C) The Comptroller of the Currency, in the case of a
- 15 national bank.

16 (3) The notice shall be in such form that may be required by the
 17 regulatory authority with which the notice is to be filed and shall include
 18 the following information:

- 19 (A) The location and a general description of the
- 20 surrounding area;
- 21 (B) Whether the location will be owned or leased;
- 22 (C) The noncore banking activities to be conducted;
- 23 (D) An estimate of the initial cost of the limited-purpose
- 24 office; and
- 25 (E) Such other relevant information as may be required by
- 26 the regulatory authority.

27
 28 SECTION 3. Arkansas Code § 23-48-703 is amended to read as follows:

29 23-48-703. Establishment of full-service branch ~~offices~~ - ~~Procedure~~
 30 Standards and procedure.

31 ~~(a) The Bank Commissioner shall have the authority to approve the~~
 32 ~~application of a state bank to establish a full-service branch if he shall~~
 33 ~~find upon investigation that the establishment of the branch is economically~~
 34 ~~feasible and will serve the public convenience and necessity.~~

35 ~~(b) The commissioner shall require the sponsor of a branch bank~~
 36 ~~application to pay a filing fee of not less than two thousand dollars~~

1 ~~(\$2,000) nor more than five thousand dollars (\$5,000) as may be set by State~~
2 ~~Bank Department regulations.~~

3 ~~(c) The sponsor of a branch bank application shall give notice of the~~
4 ~~application at or prior to filing with the commissioner by publication in a~~
5 ~~newspaper of statewide circulation.~~

6 ~~(d)(1) Any formal protest to a branch bank application must be~~
7 ~~received in writing detailing the reasons for protest within fifteen (15)~~
8 ~~days of the actual filing of the application.~~

9 ~~(2) Each person who files a formal written protest to a branch~~
10 ~~bank application shall be required to pay a fee of not less than one thousand~~
11 ~~dollars (\$1,000) nor more than three thousand dollars (\$3,000), as set by~~
12 ~~department regulations, which fee shall accompany the formal written protest~~
13 ~~and must also be received by the commissioner's office within fifteen (15)~~
14 ~~days of the actual filing of the application.~~

15 ~~(e) An adjudicatory or administrative hearing shall not be required on~~
16 ~~a branch bank application.~~

17 ~~(f) The commissioner's decision on a branch bank application will be~~
18 ~~in the form of final findings of fact, conclusions of law, and an order given~~
19 ~~by the commissioner within a reasonable period of time following the~~
20 ~~expiration of the fifteen day formal protest period. The findings of fact~~
21 ~~shall include findings that:~~

22 ~~(1) The establishment of the branch is economically feasible;~~
23 ~~and~~

24 ~~(2) Public convenience and necessity will be promoted by the~~
25 ~~establishment of the proposed full-service branch.~~

26 ~~(g) Following adoption of the commissioner's official findings of~~
27 ~~fact, conclusions of law, and order, an applicant or official protestant~~
28 ~~shall have thirty (30) days in which to appeal the commissioner's order to~~
29 ~~the appropriate circuit court.~~

30 (a) The Bank Commissioner shall have the authority to approve the
31 application of a state bank to establish a full-service branch if the
32 commissioner determines that the establishment of the full-service branch is
33 consistent with:

34 (1) Maintaining a sound banking system;

35 (2) Encouraging the bank to help meet the credit needs of the
36 community;

1 (3) Relying on the marketplace as generally the best regulator
2 of economic activity; and

3 (4) Encouraging healthy competition to promote efficiency and
4 better service to customers.

5 (b) The sponsor of a full-service branch application may file an
6 application with the commissioner by:

7 (1) Paying a filing fee established by State Bank Department
8 regulation of not less than three hundred dollars (\$300) nor more than five
9 hundred dollars (\$500); and

10 (2) Not less than thirty (30) days prior to filing the
11 application, publishing notice of the application one (1) time per week for
12 four (4) consecutive weeks in a newspaper of statewide circulation.

13 (c) The commissioner:

14 (1) May establish by regulation an expedited application process
15 and procedure for the approval of a healthy bank full-service branch
16 application; and

17 (2) Shall approve a healthy bank full-service branch application
18 unless the commissioner determines that approving the application is not
19 consistent with the standards provided in subsection (a) of this section.

20 (d)(1) The commissioner shall give notice of the filing of an
21 application under subsection (b) or subsection (c) of this section to all
22 Arkansas state-chartered banks with a bank or a full service branch currently
23 open and operating within the market area of the proposed new branch.

24 (2) The procedure for giving notice and the parameters of the
25 market area shall be established by State Bank Department regulation.

26 (e)(1) A written protest to a full-service branch application may be
27 filed with the commissioner within fifteen (15) days of the filing of the
28 application.

29 (2) The protest shall include:

30 (A) A detailed explanation of the protesting party's
31 reasons why the commissioner should deny the application; and

32 (B) A filing fee established by department regulation of
33 not less than three hundred dollars (\$300) nor more than five hundred dollars
34 (\$500).

35 (f) The commissioner may conduct an adjudicatory or administrative
36 hearing on a full-service branch application.

1 (g)(1) The commissioner shall issue an order accepting or rejecting a
2 full-service branch application within a reasonable period of time following
3 the expiration of the fifteen-day protest period under subdivision (d)(1) of
4 this section.

5 (2) The order shall include specific findings of fact and
6 conclusions of law concerning whether the establishment of the full-service
7 branch is consistent with the standards provided in subsection (a) of this
8 section.

9 (h) Within thirty (30) days after the commissioner issues an order
10 accepting or rejecting a full-service branch application, an applicant or a
11 party that filed a protest to the full-service branch application may appeal
12 the commissioner's order to the circuit court of the county where the full-
13 service branch will be established.

14
15 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the
16 General Assembly of the State of Arkansas that federal and out-of-state banks
17 have the benefit of less cumbersome branch application procedures and
18 policies; that state-chartered banks are thereby placed at a competitive
19 disadvantage; and that this act is necessary to help state-chartered banks
20 compete with other banks and to allow the Bank Commissioner appropriate
21 flexibility in administering the state's banking laws. Therefore, an
22 emergency is declared to exist and this act being immediately necessary for
23 the preservation of the public peace, health, and safety shall become
24 effective on:

25 (1) The date of its approval by the Governor;

26 (2) If the bill is neither approved nor vetoed by the Governor,
27 the expiration of the period of time during which the Governor may veto the
28 bill; or

29 (3) If the bill is vetoed by the Governor and the veto is
30 overridden, the date the last house overrides the veto.

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