



1988

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### Recommended Citation

James T. Pitts, *Interstate Banking and State Wide Branching in Arkansas: Act 12 of the 76th Arkansas General Assembly*, 11 U. ARK. LITTLE ROCK L. REV. 457 (1989).

Available at: <https://lawrepository.ualr.edu/lawreview/vol11/iss3/2>

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# INTERSTATE BANKING AND STATE WIDE BRANCHING IN ARKANSAS: ACT 12 OF THE 76TH ARKANSAS GENERAL ASSEMBLY

*James T. Pitts\**

## I. INTRODUCTION

The Arkansas General Assembly, meeting in extraordinary session, recently enacted sweeping legislation which will profoundly affect the structure of the banking industry in Arkansas.<sup>1</sup> Act 12 authorizes, for the first time, interstate banking and expanded branching authority, ultimately state wide, for Arkansas banks. Concomitantly, it restricts the branching authority of state savings and loan associations. Act 12 also clarifies the powers of the Arkansas State Bank Commissioner (Commissioner) and gives that office greater flexibility with respect to failed or failing institutions.

The stimuli behind Act 12 were threefold. First, many Arkansas bankers, particularly those in smaller community banks, were concerned that recent federal court decisions would allow national banks in Arkansas to circumvent state branching law restrictions to the competitive disadvantage of Arkansas state chartered banks.<sup>2</sup> Sec-

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1. Act of July 15, 1988, No. 12 (4th Ext. Sess.) (codified at ARK. CODE ANN. §§ 23-32-303, -1201 through -1204, -1801 through -1805, 23-33-104, 23-37-401, -404 (Adv. Code Ser. 2 1988). The full text of Act 12 is reprinted as an appendix to this article.

2. See *infra* note 15. At the time Act 12 was passed, there were twenty-three cross-county branch applications on file with the Comptroller of the Currency (Comptroller) from national banks in Arkansas. Opponents of those applications pressed for a special session of the legislature to consider a bill (which became Act 12) to close the state branching law loophole, fearing that the Comptroller would issue his approvals before the General Assembly would next meet in regular session (January, 1989). Whether those fears would have been realized cannot now, of course, be ascertained. See *infra* note 31. Moreover, it is not entirely clear whether those approvals, if issued, would have vested any rights in the applicants deserving of constitutional protections against subsequent changes in state law. See *Whitney National Bank v. James*, 189 So. 2d 430 (La. App. 1966), *application denied*, 249 La. 759, 191 So. 2d 140 (1966) for a discussion of "vested rights" and subsequent state action. Generally, a new law will not be applied if it adversely affects a party's vested rights. *Nat'l Wildlife Fed'n v. Marsh*, 747 F.2d 616, 620 (11th Cir. 1984). See also *Bennett v. New Jersey*, 470 U.S. 632, 639 (1985). *But see Piggott State Bank v. State Banking Bd.*, 242 Ark. 828, 416 S.W.2d 291 (1967);

ond, some Arkansas bankers, generally but not exclusively in the state's larger institutions, wanted Arkansas to move into the mainstream of interstate banking and allow limited bank holding company expansion into and out of the state.<sup>3</sup> Finally, the Commissioner wanted increased discretion to address failing and failed bank situations. From this mix of political and economic needs came Act 12.

Under prior law, no out of state bank or bank holding company could establish a branch or subsidiary bank in Arkansas, nor could an Arkansas bank or bank holding company establish a branch or subsidiary bank outside the state.<sup>4</sup> In addition, as described below, there were restrictions on bank branch locations within the state as well.

Arkansas commercial banks were generally precluded from branching outside the county in which the bank's main office was located, commonly referred to as cross-county branching.<sup>5</sup> In addition, if the bank was located in a county having a population of less than 200,000 inhabitants, further restrictions were imposed on the bank's intra-county branches.<sup>6</sup> For example, branches could be established

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Simpson v. Monette State Bank, 238 Ark. 314, 381 S.W.2d 443 (1964) (banking is only a privilege and no vested rights ever accrue to corporations engaged in that business).

3. See *infra* text accompanying notes 35-92. Arkansas was one of six states that had no interstate banking provision. Kansas, Montana, Hawaii, Iowa and North Dakota remain.

4. ARK. CODE ANN. § 23-32-308(d) (1987). A limited exception to this general prohibition was in the area of emergency acquisitions under federal law. See Title I of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320, 96 Stat. 1469 (codified as amended at 12 U.S.C. § 1823(f) (Garn-St Germain)).

5. As an exception to the flat prohibition against cross-county branching, prior law authorized a branch to be established outside the county "if the building to be utilized as a branch was formerly owned and used for banking purposes by a bank that has been closed by order of the [Arkansas] Bank Commissioner or the Comptroller of the Currency." ARK. CODE ANN. § 23-32-1203 (b) (1987). This provision is a curiosity. Almost every town has an old building that housed a bank which was declared insolvent, many times dating to the great depression. Under the above provision, those buildings would appear to have been viable branch locations for any bank. Act 12 clarifies what the General Assembly probably meant and authorizes those cross-county branches only in the case of merger and acquisition, including "emergency acquisitions." ARK. CODE ANN. §§ 23-32-1202(c), (d) (Adv. Code Ser. 2 1988).

6. Act 539 of 1987 lifted intra-county branch restrictions for banks "whose main office is located in a county . . . having a population of two hundred thousand (200,000) inhabitants or more . . ." Act of Apr. 1, 1987, No. 539, 1987 Ark. Acts 1496 (Adv. Leg. Ser.) (codified at ARK. CODE ANN. § 23-32-1202(a)(1) (Supp. 1987)). Under that guideline, only Pulaski County, with a population of 340,613 as of the 1980 Federal Decennial Census, would have qualified. The next most populous counties, in order, were: Washington County (100,494), Sebastian County (95,172), and Jefferson County (90,718). At the time Act 12 was passed, a lawsuit was pending which challenged the constitutionality of Act 539 as being a "special law" within the meaning of article V, section 25 of the Arkansas Constitution or a "special act" within the meaning of amendment 14. Street v. Ford, No. 87-3768 (Pulaski ch., 4th Div. 1987). With the enactment of Act 12, that lawsuit became moot.

only within the corporate limits of the town or city of the bank's main office,<sup>7</sup> unless one of the following exceptions applied: (i) within incorporated towns having a population of at least 250, or more, assuming no other bank had a main office located in the branch city;<sup>8</sup> (ii) within any "planned community development"<sup>9</sup> having a population of at least 250<sup>10</sup> or; (iii) in any unincorporated area within six miles of the corporate limits of the town or city of the bank's main office.<sup>11</sup> In no event, however, could branches cross county lines. In the area of failing and failed institutions, the Commissioner was directed to approve the sale of assets and any merger or consolidation of a troubled institution.<sup>12</sup> The troubled institution could merge or consolidate only with or to institutions whose main office was in the same city, or if none were available, within the same county.<sup>13</sup>

Act 12 was designed to accomplish three primary objectives covering each of the above areas:

1. To provide for interstate banking within the southern regional compact;<sup>14</sup>
2. To revise bank and savings and loan branching laws primarily to address the so-called "Deposit Guaranty" line of decisions;<sup>15</sup> and
3. To give the Bank Commissioner greater flexibility in failing and failed bank situations.

Although the Act certainly accomplished those goals, it also created some questions and uncertainties. For example, under the Regional Reciprocal Banking Act, Section 1 of Act 12,<sup>16</sup> out-of-state

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7. In no event could a branch be within 300 feet of a competitor bank's main office. See ARK. CODE ANN. § 23-32-1203(a)(2)(A) (Supp. 1987).

8. ARK. CODE ANN. § 23-32-1202(a)(2)(B) (Supp. 1987).

9. *Id.* § 23-32-1201(3).

10. *Id.* § 23-32-1202(a)(2)(C).

11. *Id.* § 23-32-1202(a)(2)(D).

12. *Id.* § 23-33-104(a).

13. *Id.* § 23-33-104(b).

14. See *infra* text accompanying note 47.

15. Dep't of Banking & Consumer Fin. v. Clarke, 809 F.2d 266 (5th Cir. 1987) (*Deposit Guaranty*); Texas v. Clarke, No. A-87-CA-860 (W.D. Tex. June 29, 1988); Volunteer State Bank v. Nat'l Bank of Commerce, Civ. No. 87-0800 (M.D. Tenn. Apr., 1988). National banks are authorized to branch coextensively with state banks located in the same state. 12 U.S.C. § 36(c) (1982). Under the "Deposit Guaranty" line of decisions, if state chartered thrifts are found to be "engaged in the business of banking," then those institutions would constitute "state banks" within the meaning of that provision. It then follows that branching limitations on national banks in that state would be defined by the more liberal thrift branching statutes, *i.e.*, usually state wide, than by the limitations expressly placed on state chartered commercial banks.

16. The "Regional Reciprocal Banking Act of 1988," ARK. CODE ANN. §§ 23-32-1801 to -1805 (Adv. Code Ser. 2 1988). The General Assembly neglected to specifically repeal ARK.

entrants are required to file an application with the Commissioner.<sup>17</sup> Potential applicants could be discouraged, however, by the Act's lack of a specific time period for review. Moreover, the "commitments" and "obligations" required of an out-of-state acquirer, while couched in terms of promoting economic development and aiding consumers in Arkansas, seem rather high and may further discourage entry.<sup>18</sup> In addition, the Act is unclear concerning the branching rights of an out-of-state acquirer in an emergency acquisition once the acquisition is completed.

In the branching sections, Act 12 substantially broadened the branching rights of commercial banks and at the same time appears to have substantially narrowed the branching rights of state chartered thrifts. Leaving thrifts with no greater branching rights than banks was critical to the "Deposit Guaranty" issue.

Prior to Act 12, the statutes relating to thrift branching in Arkansas never precisely defined the limits on thrift branching authority. General language in section 23-37-313(a)(1) of the Arkansas Code of 1987 (Code) was accepted as giving the savings and loan board or supervisor the authority to define branching.<sup>19</sup> Because no territorial limits were set by statute and because federal savings and loans are presumptively capable of branching statewide,<sup>20</sup> Arkansas thrifts, under the so-called "wild card" statute<sup>21</sup> were allowed state wide branching as well.<sup>22</sup>

Act 12 sought to address the above situation with two provisions. First, section 7 added a subsection to section 23-37-404,<sup>23</sup> "Branch Offices," to provide for branching using the same language that was used in the commercial bank branching section.<sup>24</sup> Second, it amended one paragraph in the "wild card" statute<sup>25</sup> to state that "nothing herein will permit an extension of state savings and loan associations' branching authority beyond the limitations of state law."<sup>26</sup> There ap-

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CODE ANN. § 23-32-308(d) (1987) which prohibited out-of-state entrants. Clearly it was repealed by implication.

17. ARK. CODE ANN. § 23-32-1804(a) (Adv. Code Ser. 2 1988).

18. *See id.* § 23-32-1804.

19. ARK. CODE ANN. § 23-37-313(a)(1) (1987).

20. *See* 12 C.F.R. § 556.5(a)(2) (1988).

21. ARK. CODE ANN. § 23-37-401 (1987).

22. *See also* RULES AND REGULATIONS OF THE ARKANSAS SAVINGS AND LOAN SUPERVISOR Rule III (1963).

23. ARK. CODE ANN. § 23-37-404 (1987).

24. *Id.* § 23-37-404 (Adv. Code Ser. 2 1988).

25. *Id.* § 23-37-401 (1987).

26. *Id.* § 23-37-401(4) (Adv. Code Ser. 2 1988).

peared to be only one small uncertainty remaining.

In defining the territorial limits in the thrift statute, the General Assembly did not, as it did in the banking section, declare that the defined limits were the *only* way to establish branches.<sup>27</sup> In addition, Act 12 did not amend the general language in subsection 23-37-313(a)(1) relating to the establishment of thrift branch offices.<sup>28</sup> Language substantially similar to the Arkansas language was relied upon by the Comptroller in finding authority for Texas and Mississippi thrifts to branch state wide.<sup>29</sup> Moreover, Act 12, in subsection 23-32-1202(a), seems to indicate that bank branches may be established if "otherwise permitted by law."<sup>30</sup> Any debate over whether there was enough uncertainty to breathe life back into the twenty-three "Deposit Guaranty" applications filed by Arkansas national banks and pending before the Comptroller when Act 12 was enacted, however, was answered by the Comptroller on September 28, 1988, when he announced that all such applications had been "withdrawn."<sup>31</sup>

The remaining significant issue Act 12 attempted to address was in the area of failing and failed banks. The Commissioner was given discretion to authorize the merger or acquisition of such institutions using a three-part test relating to the institution's condition.<sup>32</sup> Under prior law, he was compelled to authorize such mergers, acquisitions or consolidations.<sup>33</sup> In addition, the Commissioner is no longer restricted to the same county of the troubled institution in seeking an acquirer or merger partner.<sup>34</sup>

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27. Compare Act 12, section 4 (codified at ARK. CODE ANN. § 23-32-1202(b) (Adv. Code Ser. 2 1988) ("branches . . . may only be established as follows . . .")) with Act 12, section 7 (codified at ARK. CODE ANN. § 23-37-404(e) (Adv. Code Ser. 2 1988) ("[a]ny association legally chartered . . . may establish one or more . . . branches, provided that its supervisory authority approves, in the following locations . . .")).

28. See ARK. CODE ANN. § 23-37-313(a)(1) (1987).

29. *Decision of the Comptroller of the Currency on the Applications of Union National Bank of Laredo, Texas, to Establish a Branch in San Antonio, Texas and Texas Capital Bank—Westwood, N.A., to Establish a Branch in Austin, Texas*, Dec. 3, 1987; and, *Decision of the Comptroller of the Currency on the Application of Deposit Guaranty National Bank, Jackson, Mississippi, to Establish a Branch in Gulfport, Mississippi*, July 9, 1985.

30. ARK. CODE ANN. § 23-32-1202(a) (Adv. Code Ser. 2 1988).

31. Letter from L. Rodney Burgett, Director For Analysis, Office of the Comptroller of the Currency, Southwestern District, to James T. Pitts (Oct. 19, 1988). The letter stated that the applications had been withdrawn because "[s]ubsequent to the filing of the applications, the State of Arkansas branching laws were changed, specifically, Act 12 of the 76th Arkansas General Assembly, Fourth Extraordinary Session, 1988, to now limit the branching of financial institutions to within the head office county."

32. ARK. CODE ANN. § 23-33-104(a), (c) (Adv. Code Ser. 2 1988).

33. ARK. CODE ANN. § 23-33-104(a) (1987).

34. Compare ARK. CODE ANN. § 23-33-104(b) (Adv. Code Ser. 2 1988) with ARK. CODE ANN. § 23-33-104(b) (1987).

The following section by section analysis highlights the provisions of the legislation, compares it to pre-existing law and, to some extent, provides a historical perspective.

## II. INTERSTATE BANKING

### "THE REGIONAL RECIPROCAL BANKING ACT OF 1988"

The Douglas Amendment to the Bank Holding Company Act of 1956<sup>35</sup> prohibits the Federal Reserve Board from approving applications filed by bank holding companies to acquire banks outside the home state of the holding company unless the acquisition is "specifically authorized by the statute laws" of the state of the proposed acquiree. (Emergency acquisitions pursuant to Garn-St Germain, are, of course, an exception.)

Under the Douglas Amendment, however, a state may, if it so chooses, select only certain of its sister states to participate in reciprocal entry of each other's institutions.<sup>36</sup> As a result, so-called "regional compacts" were created. With the passage of Act 12, Arkansas joins what was originally called the southern regional compact, now comprised of seventeen states and the District of Columbia stretching from Texas to Maryland and including the decidedly midwestern states of Kansas<sup>37</sup> and Nebraska.

Pursuant to Act 12, to the extent and under the circumstances that the statute laws of any of those states permit entry by Arkansas banks or bank holding companies, banks or bank holding companies from sister compact states may, within certain parameters and after making a certain showing, acquire banks or bank holding companies in Arkansas.<sup>38</sup> It should be noted that any restrictions imposed by a compact state on an Arkansas entrant (such as restrictions on further branching) would apply to institutions from the state making acquisitions in Arkansas.<sup>39</sup> The same would be true, however, regarding an Arkansas entrant seeking an acquisition in a sister compact state. The statutes in this area are truly "reciprocal" statutes.

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35. 12 U.S.C. § 1842(d) (1982).

36. *Northeast Bancorp, Inc. v. Bd. of Governors*, 472 U.S. 159 (1985).

37. The State of Kansas does not have an interstate banking law. Thus, even though it is a "compact" state, Arkansas bank holding companies could not make acquisitions there and conversely, because the law is reciprocal, Kansas bank holding companies could not make acquisitions in Arkansas.

38. ARK. CODE ANN. § 23-32-1804(e) (Adv. Code Ser. 2 1988).

39. *Id.* § 23-32-1804(e)(6).

## A. Definitions

Under the statute, a bank holding company, but not necessarily a bank, is deemed acquired if it is merged or consolidated with another bank holding company. On the other hand, either a bank or a bank holding company is considered acquired if (i) more than five percent of its voting shares are owned or controlled by another institution; (ii) all or substantially all of its assets are acquired by another institution; or (iii) any other action is taken which would result in the bank or bank holding company being controlled by another institution.<sup>40</sup>

The Act defines the terms "Arkansas bank" and "Arkansas bank holding company." An Arkansas bank is either a national or Arkansas state chartered bank with banking offices only in Arkansas.<sup>41</sup> An Arkansas bank holding company, on the other hand, may have locations outside Arkansas as long as the company's principal place of business is in Arkansas *and* more than eighty percent of its subsidiaries' deposits are held by subsidiaries located in the *region*.<sup>42</sup> A bank holding company's "principal place of business" is the state in which its subsidiaries' total deposits are the largest.<sup>43</sup>

The Act defines "bank" co-extensively with the federal definition to include FDIC insured banks or institutions eligible to become insured banks which accept demand deposits and engage in the business of making commercial loans.<sup>44</sup> The federal definition of bank holding company is specifically incorporated by reference<sup>45</sup> as is the definition of "control."<sup>46</sup> The "region" is defined to include Arkansas, Tennessee, Missouri, Mississippi, Texas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Kansas, Nebraska, West Virginia, Virginia and the District of Columbia.<sup>47</sup>

A "regional bank" is a national bank or a bank chartered by one of the states in the region which has banking offices located *only* in the region.<sup>48</sup> The definition of "regional bank holding company" is again,

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40. ARK. CODE ANN. § 23-32-1802(1) (Adv. Code Ser. 2 1988).

41. *Id.* § 23-32-1802(2). The term "banking office" is any location which accepts deposits. *Id.* § 23-32-1802(5)(A). Specifically excepted from the definition are automatic teller machines, loan production offices and offices outside the United States. *Id.* § 23-32-1802(5)(B).

42. *Id.* § 23-32-1802(3).

43. *Id.* § 23-32-1802(11).

44. *Id.* § 23-32-1802(4). *See* 12 U.S.C. § 1841(c) (1982).

45. Ark Code Ann. § 23-32-1802(6) (Adv. Code Ser. 2 1988). *See* 12 U.S.C. § 1841(a)(1) (1982).

46. Ark Code Ann. § 23-32-1802(8) (Adv. Code Ser. 2 1988). *See* 12 U.S.C. § 1841(a)(2) (1982).

47. Ark Code Ann. § 23-32-1802(12) (Adv. Code Ser. 2 1988).

48. *Id.* § 23-32-1802(13).



by comparison, broader, as it incorporates a principal place of business and asset test for a determination of a holding company's status as a regional bank holding company.<sup>49</sup> If that were not true, unforeseen results might arise. For example, some states, such as Maryland, are members of more than one compact. If a Maryland bank holding company had subsidiaries located in Pennsylvania, which is outside the southern regional compact but which has a reciprocal law with Maryland, it could still acquire banks in Arkansas as long as eighty percent of its subsidiaries' total deposits were in subsidiaries located in the "region." If, however, the Pennsylvania subsidiary had more than twenty percent of the holding company's total deposits, then the holding company would no longer be a "regional bank holding company" under the Act and would be ineligible to make acquisitions in Arkansas.

## B. Acquisition of Control

### 1. Application Process

Section 23-32-1803 sets forth the application process.<sup>50</sup> A regional bank holding company seeking to acquire an Arkansas bank or bank holding company must first file an application with the Commissioner along with a filing fee of \$1,000 to \$10,000.<sup>51</sup> The application must, among other things, demonstrate to the satisfaction of the Commissioner that the proposed acquisition will *promote* the safety and soundness of the acquiree.<sup>52</sup> In addition, the applicant must demonstrate compliance with the Community Reinvestment Act of 1977 (CRA), by the subsidiaries then under its control, and it must also indicate its intention to comply with the CRA in the operation of the contemplated acquiree.<sup>53</sup>

The applicant must also address the issue of how the transaction

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49. *Id.* § 23-32-1802(14).

50. *Id.* § 23-32-1803.

51. *Id.* §§ 23-32-1803(b), -1804(a). The filing fee is to be set by regulation. *Id.* § 23-32-1805(b).

52. *Id.* § 23-32-1804(a)(1). Does this mean that the applicant must affirmatively demonstrate that the safety and soundness of the acquiree will be better protected after the acquisition than before? The provision could have been drafted to simply mandate the status quo, *i.e.*, that the safety and soundness of the acquiree would not be harmed. It rather appears, however, to require a demonstration of increased protection against failure which, of course, would be much easier to show if the proposed acquiree is a troubled institution. Has the General Assembly indicated its preference regarding interstate acquisitions with this requirement?

53. *Id.* § 23-32-1804(a)(2), (3). See Pub. L. No. 95-128, 91 Stat. 1147 (codified at 12 U.S.C. § 2901 (1982)).

will bring *net*, new benefits to Arkansas.<sup>54</sup> Under this showing, the applicant is required to describe its initial capital investments,<sup>55</sup> its loan, investment, and dividend policies, and its general plan of business including a description of the consumer and business services that it will offer. Moreover, the applicant must describe the steps it will take to “meet the credit needs of individuals and small businesses in the communities affected by the transaction.”<sup>56</sup> In making all the above showings, the applicant is required to provide specific details regarding the following:

1. How it intends to determine the credit needs of the community and how it intends to communicate with the community regarding its available services;
2. The extent of marketing programs to make members of the community aware of the services it offers (this requirement appears duplicative of item (1) above);
3. The extent to which the applicant’s board of directors will be involved in CRA compliance;
4. Any practices the applicant contemplates which are intended to discourage applications for any particular type of credit offered;
5. The applicant’s intended geographic distribution of credit;
6. The applicant’s intended participation in local community development projects;
7. The applicant’s intended participation in originating mortgage loans;
8. The applicant’s participation in government programs for housing, small business, or small farms; and
9. A description of the applicant’s ability to meet the credit needs of the community.<sup>57</sup>

Where appropriate, the applicant holding company is also directed to furnish this historical information for its existing subsidiary banks.<sup>58</sup>

The information in the application is to be updated by annual reports to the Commissioner who monitors continued compliance with the Act’s criteria. Supplemental reports may also be required.<sup>59</sup> If the Commissioner finds that a regional bank holding company is

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54. Ark. Code Ann. § 23-32-1804(a)(4) (Adv. Code Ser. 2 1988).

55. The term “capital investments” is not defined in the statute and in this context its meaning is unclear. Is the applicant to disclose the amount it is “investing” in making the acquisition (and what about expenses that are not “capitalized”) or must it also disclose “capital” investments in other enterprises which, of course, are limited by statute?

56. ARK. CODE ANN. § 23-32-1804(a)(4) (Adv. Code Ser. 2 1988).

57. *Id.*

58. *Id.* § 23-32-1804(b).

59. *Id.* § 23-32-1804(d)(1).

not living up to its commitments as stated in its application, then the Commissioner may hold a public hearing on that issue. Upon a determination that the regional bank holding company has not met its "commitments and obligations," the Commissioner may assess a civil money penalty of up to \$10,000 a day for each day of violation or may order a divestiture. The latter may be ordered, however, "only after a finding of flagrant and continued failure" to comply. The regional bank holding company would then have two years to divest.<sup>60</sup> The Commissioner is given specific rulemaking authority to define the continuing obligations and commitments that must be met under the Act.<sup>61</sup>

Subsection 23-32-1804(e) sets out five specific criteria that must be determined by the Commissioner prior to the approval of an acquisition by a regional bank holding company.<sup>62</sup> First, the economic commitments and obligations, as described above, must be adequately addressed.<sup>63</sup> Second, the laws of the applicant's state must permit an Arkansas bank holding company to acquire banks or bank holding companies in the applicant's state.<sup>64</sup> Third, the laws of the applicant's state must allow acquisition of the applicant by the contemplated Arkansas acquiree, if the transaction were so structured.<sup>65</sup> Fourth, the Arkansas bank acquiree must have been in existence for ten years *or* if a holding company, all the subsidiaries must have been in existence for ten years.<sup>66</sup> Lastly, appropriate notice, as defined in the Act, must have been published.<sup>67</sup> The acquisition may thereafter be effected subject, however, to conditions that would be imposed on an Arkansas bank holding company making an acquisition in the applicant's state.<sup>68</sup>

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60. *Id.* § 23-32-1804(d)(2).

61. *Id.* § 23-32-1804(d)(3).

62. *Id.* § 23-32-1804(e).

63. *Id.* § 23-32-1804(e)(1).

64. *Id.* § 23-32-1804(e)(2).

65. *Id.* § 23-32-1804(e)(3).

66. *Id.* § 23-32-1804(e)(4).

67. *Id.* § 23-32-1804(e)(5).

68. *Id.* § 23-32-1804(e)(6). Note should be taken that there are no time frames mandating action by the Commissioner. That, of course, is not true of such applications filed with the Federal Reserve Board under section 3 of the Bank Holding Company Act of 1956, which must be acted upon within a certain period of time. See 12 C.F.R. § 225.14 (1988). The uncertainty created by the Arkansas procedure as to the timing of any approval may discourage acquisitions. It will certainly discourage any hostile takeover bids. Earlier drafts of the legislation included specific time frames for decision by the Commissioner. See the revised draft dated March 21, 1988. Because this is a procedural rather than substantive requirement, it would probably not be imposed on Arkansas bank holding companies seeking to make ac-

## 2. Grandfather Provision

Subsection 23-32-1804(f) includes a grandfather clause, though its scope is a little unclear. As is common in legislative drafting, the placement, punctuation, and meaning of the disjunctive “or” is critical to an interpretation of the provision.

Subparagraph (f) appears to allow a bank holding company that controlled an Arkansas bank or bank holding company *prior to the effective date of the Act* to make further acquisitions as though it were an Arkansas bank holding company.<sup>69</sup> The paragraph then appears, after the disjunctive “or,” to authorize a regional bank holding company that has an Arkansas bank or bank holding company subsidiary to also branch as though it were an Arkansas bank holding company *if* the pre-existing subsidiary was not acquired as an emergency acquisition under Garn-St Germain or in connection with securing or collecting a debt previously contracted.<sup>70</sup>

The result would allow regional bank holding companies that come in under the Act to branch as though they were Arkansas bank holding companies. Any bank holding company having a presence in Arkansas on the effective date of the Act, notwithstanding how acquired (*i.e.*, under Garn-St Germain or in a DPC transaction), and notwithstanding whether it would otherwise qualify as a regional bank holding company, would truly be grandfathered and treated as an Arkansas bank holding company for branching purposes.<sup>71</sup>

An exception to the grandfather provisions applies to banks or corporations organized under sections 25 or 25(a) of the Federal Reserve Act<sup>72</sup> that were “controlled” on the effective date of the Act.<sup>73</sup> The exemption is a little curious. These “controlled” banks or corporations, commonly referred to as Edge Act or Agreement Corporations, are organized by domestic bank holding companies for the purpose of conducting business outside the United States. In fact, such corporations are prohibited by statute from conducting any part of their business in the United States except to the extent the Federal

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quisitions in other states. It would have the effect, however, of making out-of-state entry into Arkansas more difficult. Whether that was the intent of the General Assembly is not known.

69. ARK. CODE ANN. § 23-32-1804(f) (Adv. Code Ser. 2 1988).

70. *Id.* A transaction involving a “debt previously contracted” refers to a creditor’s acquisition of a debtor’s assets which were pledged to secure a now defaulted obligation, in other words, a foreclosure. The shorthand term “DPC transaction” is sometimes used to describe that transaction.

71. See *infra* text accompanying note 106 for a discussion of the effect the new branching provisions will have on emergency acquisitions.

72. 12 U.S.C. §§ 601-04 (1982) (section 25); 12 U.S.C. §§ 611-31 (1982) (section 25(a)).

73. ARK. CODE ANN. § 23-32-1804(f) (Adv. Code Ser. 2 1988).

Reserve Board determines that it is incidental to the company's international business.<sup>74</sup>

It would seem of greater concern to regulate the locations of foreign branches or agencies organized under the International Banking Act of 1978<sup>75</sup> (IBA) that are located in Arkansas. The activities of such foreign institutions are generally coextensive to those of a national bank operating at the same location<sup>76</sup> with the branching restrictions, both intrastate and interstate (at least as to federal branches) governed by federal law.<sup>77</sup> Why ownership of an Edge Act or Agreement Corporation established under federal law<sup>78</sup> should be of concern for purposes of this grandfather clause is not clear. Neither of those companies, as noted above, can do business in Arkansas. On the other hand, control of a foreign agency or branch doing business in Arkansas under the IBA should have been addressed, otherwise those institutions would be grandfathered and treated like Arkansas banks.

### C. Prohibited Transactions; Divestiture

Any acquisition outside the Act, except as specifically permitted by federal law, is prohibited.<sup>79</sup> In addition, if at any time an Arkansas bank holding company or regional bank holding company loses its status as such under the Act's definitions, it must divest its Arkansas subsidiaries within two years.<sup>80</sup> Certain exceptions are provided, such as acquisitions outside the region under Garn-St Germain or in connection with a debt previously contracted.<sup>81</sup> In addition, an increase in deposits outside the region unconnected with an acquisition would likewise not affect the status of the company as an Arkansas or regional bank holding company.<sup>82</sup> The remaining exception in the statute appears to have a typographical error which makes it nonsensical.<sup>83</sup>

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74. 12 U.S.C. § 616 (1982). Reference should be made to 12 C.F.R. §§ 211.1-211.7 (1988) which describes the international operations of United States banking organizations. The specific list of permissible domestic activities of Edge Act and Agreement Corporations is contained in 12 C.F.R. § 211.4(e) (1988).

75. Pub. L. No. 95-369, 92 Stat. 607 (codified at 12 U.S.C. § 3101 (1982)).

76. 12 U.S.C. § 3102(b) (1982).

77. See 12 U.S.C. §§ 3102(h) and 3103 (1982).

78. 12 U.S.C. §§ 601, 611 (1982).

79. ARK. CODE ANN. § 23-32-1805 (Adv. Code Ser. 2 1988).

80. *Id.* § 23-32-1805(b).

81. *Id.* § 23-32-1805(b)(1), (2).

82. *Id.* § 23-32-1805(b)(4).

83. *Id.* § 23-32-1805(b)(3).

Subsection 23-32-1805(b)(3) exempts acquisitions of companies organized under sections 25 or 25(a) of the Federal Reserve Act or a bank or bank holding company organized under the laws of a foreign country that is principally engaged in business outside the United States and which either has no banking office in the United States that is engaged only in business activities permissible for a bank or corporation operating under Section 25 or 25(a) of the Federal Reserve Act, as amended.<sup>84</sup>

One must presume that words to the effect of "or that has any such offices maintained in the United States" should be inserted after the phrase "either has no banking office in the United States." As it is currently written, the section can be read expansively to except foreign corporations principally engaged in business outside the United States as long as those companies' United States offices engage in *greater* activities than those allowed under section 25 or 25(a) of the Federal Reserve Act. I do not believe that is what the General Assembly intended.

In any event, the Commissioner is empowered to enforce the Act's prohibitions through the imposition of fines, the issuance of cease and desist orders, and such other remedies as are provided by law.<sup>85</sup>

#### D. Applicable Law

Section 23-32-1803 makes clear that any regional bank holding company that controls an Arkansas bank or bank holding company is subject to the laws of Arkansas that govern Arkansas bank holding companies.<sup>86</sup> (The territorial reach of the statute is probably limited to a bank holding company's operations in Arkansas.) The section gives the Commissioner general rulemaking authority and describes the application fees.<sup>87</sup>

Subsection 23-32-1803(c) provides that "[a]ny regional bank holding company that has an Arkansas bank subsidiary and that is not organized under the laws of this state shall."<sup>88</sup> (1) qualify to do

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84. *Id.*

85. *Id.* § 23-32-1805(c).

86. *Id.* § 23-32-1803.

87. *Id.*

88. *Id.* § 23-32-1803(c). This provision must be directed toward the status of the holding company rather than its subsidiaries. An Arkansas bank subsidiary can either be a national or Arkansas state chartered bank having banking offices only in Arkansas. If the provision were directed toward the status of the subsidiary, then a regional bank holding company having a national as opposed to state chartered subsidiary would be subject to more stringent require-

business in Arkansas, (2) advise the Commissioner of its registered agent and office, (3) agree to be bound by all provisions of the Act, and (4) promptly notify the Commissioner of any changes in its registered agent or office.<sup>89</sup>

The remaining provisions of the Regional Reciprocal Banking Act authorize the Commissioner to enter into cooperative reciprocal agreements with other state regulators for the periodic examination of bank holding companies.<sup>90</sup> The Commissioner is also empowered to conduct joint actions with other regulators or to take independent action to "assure compliance with the laws of this state."<sup>91</sup> Willful violations by an institution can lead to criminal conviction and a fine of \$500 to \$1000 for each day that the violation continues. Individuals convicted upon a finding of willful violation can be fined from \$1000 to \$5000 or imprisoned for not more than one year, or both.<sup>92</sup>

### III. BANK BRANCHING

#### A. Branch Offices

Subsection 23-32-1201(3) amends the definitions section relating to "branch offices." Included now in that section as subsection (3) is a definition of "de novo charter," defined as a bank whose charter has been issued for less than ten years.<sup>93</sup> Subsection 23-32-303(4) amends the definitions section of the Arkansas Bank Holding Company Act<sup>94</sup> to redefine "de novo charter" for purposes of that statute. That term now means a bank charter for which an application was filed after December 31, 1982 *and* which has been in existence for less than ten years.<sup>95</sup> The length of time that a bank must be in existence to be eligible for acquisition by an out-of-state acquirer is thus different from the length of time that a bank must be in existence for purposes of cross-county acquisition, even though both provisions speak in terms of "de novo charters."<sup>96</sup> Charters issued in connection with

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ments because the subsidiary would not be "organized under the laws of this state [Arkansas]." *Id.*

89. *Id.*

90. *Id.* § 23-32-1803(d). There is no mention of Federal Reserve Board examinations. Perhaps the intention was to only have agreements regarding examination of subsidiary banks?

91. *Id.*

92. *Id.* § 23-32-1803(e).

93. *Id.* § 23-32-1201(3).

94. *Id.* § 23-32-303(4).

95. The threshold in previous law was twenty years. ARK. CODE ANN. § 23-32-303(4) (1987).

96. Compare the definition of "de novo charter" in the Arkansas Bank Holding Company Act, ARK. CODE ANN. § 23-32-303(4) (Adv. Code Ser. 2 1988) with the definition of that same

emergency acquisitions are excepted as under previous law.<sup>97</sup>

Under the Arkansas Bank Holding Company Act, any charter granted upon application filed before December 31, 1982, notwithstanding its age, is not a de novo charter.<sup>98</sup> Hence, at present, there is an approximate three year differential between de novo charters for purposes of determining eligibility for acquisition by multi-bank holding companies within Arkansas for use as bank branch locations as opposed to acquisitions by out-of-state regional bank holding companies for purposes of entry into Arkansas. Once here, however, regional bank holding companies can make further acquisitions as though they were Arkansas bank holding companies.

The term "de novo charter" is important in one other regard. Bank holding companies in Arkansas are prohibited from having more than one subsidiary if one or more such subsidiaries has a de novo charter.<sup>99</sup> This provision, taken from current law, could be clearer. In this provision, subsidiary must mean subsidiary bank, since bank holding companies can have banking and non-banking subsidiaries. If such is the case, then what the statute seemingly tries to say is that if a bank holding company has a banking subsidiary with a de novo charter, then it may have no other banking subsidiaries. The effect of this is that no multi-bank holding companies in Arkansas can have any bank subsidiaries with de novo charters.

## B. Branch Locations

Section 23-32-1202 amends prior law<sup>100</sup> governing bank branch locations. Subsection (a) prohibits banking institutions from engaging in the business of banking at any location other than at a principal banking office or branch bank "except as otherwise permitted by law."<sup>101</sup> Subsection (b) provides that a bank may establish full service branches and/or customer-bank communication terminals as follows:

1. Anywhere within the county of its principal banking office;
2. In connection with the relocation of its principal office, it may continue to use the former principal office location as a branch,<sup>102</sup>

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term under the "Branch Office" subchapter in the Financial Institutions Chapter, ARK. CODE ANN. § 23-32-1201(3) (Adv. Code Ser. 2 1988). Act 12 also deleted the term "planned development community" from the latter provision as not being a term used under present law.

97. ARK. CODE ANN. § 23-32-303(4) (Adv. Code Ser. 2 1988).

98. *Id.*

99. *Id.* § 23-32-306 (1987).

100. *Id.* § 23-32-1202 (1987).

101. *Id.* § 23-32-1202(a) (Adv. Code Ser. 2 1988).

102. *Id.* § 23-32-1202(b)(2). This provision is similar to prior law, ARK. CODE ANN. § 23-32-1202(a)(2)(A)(ii) (Supp. 1987), which allowed for relocation of a bank's principal office.



3. After December 31, 1993, branches may be established in counties contiguous to that of the principal office;
4. After December 31, 1998, branches may be located anywhere in the state.<sup>103</sup>

Subsection (c) allows for branching by acquisition, but only if the acquiree bank is in an incorporated city or town. Moreover, both the acquirer and acquiree must be at least ten years old.<sup>104</sup> In other words, neither can have de novo charters.

Subsection (d) provides that none of the restrictions as to branch bank locations "will be effective in emergency instances in which the purchase and assumption of the assets and liabilities of a failed or failing<sup>105</sup> . . . bank becomes necessary due to state or federal regulatory action."<sup>106</sup> A question presented under this subsection is whether the branching restrictions apply after an emergency acquisition. Read broadly, subsection (d) would appear to exempt such an institution so that after acquisition by either an in-state or out-of-state bank holding company, it could branch without restriction. I do not believe that is what the General Assembly intended. I assume they wished only to exempt the initial acquisition. A narrow reading provides the latter result. The language, however, could be more precise.

### C. Orders of the Commissioner

Subsection 23-32-1203(f) establishes the criteria for bank branch locations and provides for a fifteen day protest period.<sup>107</sup> In order to grant an application, the Commissioner must find that:

1. Public convenience and need will be promoted;
2. "Local conditions assure reasonable promise of a successful operation . . ."; and

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Unlike prior law, however, there are no specific limitations. Previously, ARK. CODE ANN. § 23-32-1202(a)(2)(A) (Supp. 1987) limited any movement of the principal office to within the same town or city. If that were not enough, ARK. CODE ANN. § 23-32-1202(b) (Supp. 1987) specifically prevented any movement across county lines. Act 12 does not contain those same limitations. Although surely unintended, Act 12 would appear to authorize unlimited relocation of a bank's principal office and the use of the former principal office as a branch. Thus state wide branching through principal office relocation may have been authorized.

103. ARK. CODE ANN. § 23-32-1202(b) (Adv. Code Ser. 2 1988).

104. *Id.* § 23-32-1202(c).

105. A failing bank is defined as one with less than three percent capital-to-asset ratio, major and serious problems that are not being satisfactorily addressed, *and* one which the Commissioner concludes has a high potential for failure. ARK. CODE ANN. § 23-33-104(c) (Adv. Code Ser. 2 1988).

106. ARK. CODE ANN. § 23-32-1202(d) (Adv. Code Ser. 2 1988).

107. *Id.* § 23-32-1203(f).

3. "Suitable physical facilities will be provided . . . ." <sup>108</sup>

#### D. Use of Existing Facilities (Grandfathered Branch Locations)

Section 23-32-1204 provides a general grandfather provision for any bank branch facility that was open and in operation as of June 30, 1988.<sup>109</sup> The exact language "in operation" appears directed toward the Deposit Guaranty applications. The drafters apparently wanted to grandfather all bank branches existing under prior law, even those established pursuant to Act 539, which at the time was under constitutional attack.<sup>110</sup> The drafters, however, did not wish to give any argument that branch applications merely on file with the regulators were somehow also grandfathered.

### IV. THRIFT BRANCHING

Section 23-37-404 amends the savings and loan branching statute<sup>111</sup> by adding new subsection (e).<sup>112</sup> This subsection contains the same branching provisions as in section 23-32-1202(b) relating to state chartered commercial banks.<sup>113</sup>

There is an interesting sidelight to this provision. Obviously, the General Assembly was attempting to negate the effect of the "Deposit Guaranty" line of cases.<sup>114</sup> Those decisions stand for the proposition that national banks may branch coextensively with state chartered thrifts under 12 U.S.C. § 36(c), if thrifts in the state are engaged in the business of banking. At the time Act 12 was passed, there were some 23 applications on file with the Comptroller of the Currency from national banks in Arkansas seeking to branch utilizing that theory. Although as a practical matter the issue now appears moot, an argument can be made that the General Assembly left the door slightly ajar.

Section 23-37-404 of the savings and loan statutes was amended by Act 12 and is entitled "Branch Offices."<sup>115</sup> In its previous form, this section did not specifically authorize branch offices and it certainly did not define their limitations.<sup>116</sup> In this aspect, Arkansas law

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108. *Id.*

109. *Id.* § 23-32-1204.

110. *See supra* note 6.

111. ARK. CODE ANN. § 23-37-404 (1987).

112. *Id.* § 23-37-404(e) (Adv. Code Ser. 2 1988).

113. *See id.* § 23-32-1202(b) (Adv. Code Ser. 2 1988).

114. *See supra* note 15.

115. ARK. CODE ANN. § 23-37-404 (Adv. Code Ser. 2 1988).

116. *Id.* § 23-37-404 (1987).

was substantially similar to that of Mississippi. The court in *Deposit Guaranty* and the Comptroller looked to language like that in section 23-37-313(a)(1) of the Arkansas Code as authorizing state wide branching.<sup>117</sup> This section was not amended nor referenced in any way in Act 12. Moreover, there is nothing in the new statute indicating that it is the exclusive method of thrift branching. Perhaps argument could be made that state wide branching still exists for thrifts and if so, then for national banks. Further, argument could be made that the language in subsection 23-32-1202(a) of the 1988 statute authorizing banks to operate branches "as otherwise permitted by law"<sup>118</sup> indicates legislative acknowledgment that subsection 23-32-1202(b) is not the exclusive method by which banks may branch.<sup>119</sup>

Section 8 of Act 12 amends subsection 23-37-401(4),<sup>120</sup> the so-called "wild-card" provision, which allows state thrifts to conduct any business practice, procedure, method, or system authorized to a federal association. The amendment specifically excepts any extension of branching authority beyond the limitations of state law.<sup>121</sup>

#### V. FAILING OR FAILED BANKS

Section 9 of Act 12 amends section 23-33-104<sup>122</sup> concerning failing and failed institutions. The section defines failing and failed banks and gives the Commissioner discretion to authorize mergers, purchases, and consolidations of troubled banks based on a sliding scale relating to geographic proximity of the affected institutions.<sup>123</sup> Former law directed the Commissioner to authorize mergers, purchases, and consolidations and appeared to give him no alternatives in resolving failing bank situations. In addition, the Commissioner was required to find the acquirer or merger partner within the county of the failing bank's main office.<sup>124</sup> Now the Commissioner can look state wide and even out-of-state, but not outside the region. The section specifically protects the rights of minority shareholders. It further provides that "[n]othing contained in this section shall . . .

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117. See *supra* note 29 and accompanying text. See also Dep't of Banking & Consumer Fin. v. Clarke, 809 F.2d 266 (5th Cir. 1987) (*Deposit Guaranty*); ARK. CODE ANN. § 23-37-313(a)(1) (1987).

118. ARK. CODE ANN. § 23-32-1202(a) (Adv. Code Ser. 2 1988).

119. See *id.* § 23-32-1202(b).

120. *Id.* § 23-37-401(4) (1987).

121. *Id.* § 23-37-401(4) (Adv. Code Ser. 2 1988).

122. *Id.* § 23-33-104 (Supp. 1987).

123. *Id.* § 23-33-104(b) (Adv. Code Ser. 2 1988).

124. *Id.* § 23-33-104(b) (Supp. 1987).

alter, amend, or repeal . . . branching authority for banks.”<sup>125</sup>

## VI. CONCLUSION

Arkansas was one of the very last states to open its borders for interstate expansion. Although there has been speculation regarding out-of-state movement into Arkansas, as of this writing no out-of-state acquisitions under the provisions of Act 12 have been announced. The interest of potential acquirers may be dampened by Arkansas' usury provision and the impression that Arkansas' overall economy is less than booming.

As to the branching provisions, the General Assembly went to great lengths to protect the value of community bank charters by phasing in state wide branching over a ten year period. That is a very long trigger. Cross-county branching now may occur by acquisition only, thus giving small town bankers an opportunity to liquify their investment before they are confronted with a big city competitor across the street.

Few persons in any industry truly relish increased competition. In the financial services industry, so-called “deregulation” has altered forever the way a banker must conduct business. Whether the industry is stronger as a result is open to question. What is beyond doubt, however, is that the domestic banking industry must increasingly compete in a global economy with market forces well beyond its local service area. I believe Act 12 lays the foundation for a banking industry in Arkansas that may have fewer institutions but which overall will be better able to compete and serve the citizens of the state.<sup>126</sup>

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125. *Id.* § 23-33-104(e) (Adv. Code Ser. 2 1988). Compare ARK. CODE ANN. § 23-33-104(e) (Adv. Code Ser. 2 1988) with ARK. CODE ANN. § 23-32-1202(d) (Adv. Code Ser. 2 1988).

126. As a final thought, Act 12 contained no “general repealer,” *i.e.*, no provision to the effect that all laws previously enacted which are inconsistent are hereby repealed. Thus, previous restrictions on branching and interstate banking are repealed only by implication. Whether the lack of a general repealer will create any practical uncertainty remains to be seen. Clearly, Act 12 could have been more complete.

## APPENDIX

Act 12, Fourth Extraordinary Session, 1988  
76th General Assembly, State of Arkansas

“AN ACT TO AMEND CHAPTER 32 OF TITLE 23 OF THE ARKANSAS CODE OF 1987 BY ADDING THERETO A NEW SUBCHAPTER 18 TO AUTHORIZE REGIONAL RECIPROCAL INTERSTATE BANKING; TO AMEND SECTION 23-32-1201 OF THE ARKANSAS CODE OF 1987 ANNOTATED TO ADD A DEFINITION OF ‘DE NOVO CHARTER’; TO AMEND SECTION 23-32-303(4) OF THE ARKANSAS CODE OF 1987 ANNOTATED TO AMEND THE DEFINITION OF ‘DE NOVO CHARTER’; TO AMEND SECTION 23-32-1203 (F) OF THE ARKANSAS CODE OF 1987 ANNOTATED TO PROVIDE FOR FINDINGS OF FACT; TO AMEND SECTION 23-32-1204 OF THE ARKANSAS CODE OF 1987 ANNOTATED TO AUTHORIZE PREEXISTING FACILITIES; TO AMEND SECTION 23-32-1202 OF THE ARKANSAS CODE OF 1987 TO PROVIDE FOR THE ORDERLY EXPANSION OF BRANCH BANKING IN THIS STATE; TO AMEND SECTION 23-37-404 OF THE ARKANSAS CODE OF 1987 RELATING TO BRANCHING BY SAVINGS AND LOAN ASSOCIATIONS; TO AMEND SECTION 23-32-401(4) TO RESTRICT SAVINGS AND LOAN ASSOCIATION BRANCHING TO THAT AUTHORIZED BY STATE LAW; TO AMEND SECTION 23-33-104 OF THE ARKANSAS CODE OF 1987 TO CLARIFY THE POWERS OF THE STATE BANK COMMISSIONER WITH RESPECT TO FAILED OR FAILING BANKS; TO PROVIDE FOR AN EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.”

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

## SECTION 1. Interstate Banking.

Chapter 32 of Title 23 of the Arkansas Code of 1987 Annotated is hereby amended by adding thereto a new subchapter to read as follows:

## Subchapter 18—Regional Reciprocal Interstate Banking

23-32-1801. Title. This Act may be cited as the “Regional Reciprocal Banking Act of 1988.”

23-32-1802. Definitions. For the purposes of this Act the following words and phrases shall have the meanings indicated. All refer-

ences to federal law shall be to such law as it exists on June 30, 1988, including regulations issued thereunder.

(a) "Acquire" means:

(1) The merger or consolidation of one Bank Holding Company with another Bank Holding Company;

(2) The acquisition by a Bank Holding Company of the direct or indirect ownership or control of voting shares of a bank or of another Bank Holding Company if, after such acquisition, such Bank Holding Company will directly or indirectly own or control more than five percent (5%) of any class of voting shares of such Bank Holding Company or bank;

(3) The direct or indirect acquisition by a Bank Holding Company of all or substantially all of the assets of a bank or of another Bank Holding Company; or

(4) Any other action that would result in the direct or indirect control by a Bank Holding Company of a bank or another Bank Holding Company.

(b) "Arkansas bank" means a bank organized under the laws of this State or the United States and having banking offices located only in Arkansas.

(c) "Arkansas Bank Holding Company" means a Bank Holding Company:

(1) That has its principal place of business in this State; and

(2) More than eighty percent (80%) of the total deposits of the bank subsidiaries are held by bank subsidiaries located within the Region.

(d) "Bank" means any "insured bank" as such term is defined in Section 3(h) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(h), or any institution eligible to become an insured bank as such term is defined therein, which, in either event:

(1) Accepts deposits that the depositor has a legal right to withdraw on demand; and

(2) Engages in the business of making commercial loans.

(e) "Banking office" means any bank, branch of a bank, or any other office at which a bank accepts deposits; however, the term banking office shall not include;

(1) unmanned automatic teller machines, point of sale terminals, or other similar unmanned electronic banking facilities at which deposits may be accepted;

(2) offices located outside the United States; or

(3) loan production offices, representative offices, or other offices at which deposits are not accepted.

(f) "Bank Holding Company" means any company which is a Bank Holding Company under the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841(a).

(g) "Commissioner" shall mean the Bank Commissioner of the State of Arkansas.

(h) "Control" has the meaning set forth in Section 2(a)(2) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841.

(i) "Department" means the Arkansas Bank Department.

(j) "Deposits" means all demand, time, and savings deposits of individuals, partnerships, corporations, the United States, and states and political subdivisions in the United States, but does not include deposits of banks or foreign governments or institutions or deposits held by foreign banking offices or corporations organized pursuant to Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§ 601 through 604a or 12 U.S.C. §§ 611 through 631. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by banks with state or federal regulatory agencies pursuant to rules established by the Department.

(k) The "principal place of business" of a Bank Holding Company is located in the state in which the total deposits of the Bank subsidiaries of the Bank Holding Company are the largest.

(l) "Region" means the states of Arkansas, Tennessee, Missouri, Mississippi, Texas, Louisiana, Oklahoma, Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, Kansas, Nebraska, District of Columbia and West Virginia.

(m) "Regional bank" means a bank organized under the laws of the United States or of one of the states in the Region other than Arkansas and having banking offices located only in states within the Region.

(n) "Regional Bank Holding Company" means a Bank Holding Company other than an Arkansas Bank Holding Company which

(1) has its principal place of business in a state within the Region;

(2) more than eighty percent (80%) of the total deposits of the bank subsidiaries of which are held by Regional Bank Subsidiaries located within the region;

(3) is not controlled by a Bank Holding Company other than a Regional Bank Holding Company; and

(4) is neither a foreign bank as defined in the International Banking Act of 1978, 12 U.S.C. § 3101(7) nor controlled by such a foreign bank.

(o) "Subsidiary" means that which is set forth in Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841.

#### 23-32-1803. Acquisition of Control.\*

(a) A Regional Bank Holding Company seeking to acquire an Arkansas bank or Arkansas Bank Holding Company shall file with the Commissioner an application containing information satisfactory to the Commissioner:

(1) that the acquisition will promote the safety and soundness of the institution to be acquired;

(2) that the Banks already controlled by the applicant adequately meet the convenience and needs of the communities served by them in accordance with the federal Community Reinvestment Act of 1977;

(3) that the applicant intends to adequately meet the convenience and needs of the communities served by the Arkansas bank or Arkansas Bank Holding Company proposed to be acquired in accordance with the federal Community Reinvestment Act of 1977; and

(4) that addresses the issue of how the transaction will bring net new benefits to Arkansas. The application shall include, but not be limited to, information which addresses the Regional Bank Holding Company's initial capital investments, loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services which will be offered. Such information required by this subparagraph (a)(4) shall specifically address the steps that will be taken to meet the credit needs of individuals and small businesses in the communities affected by the transaction. The information submitted shall include specific details of the intentions of the Regional Bank Holding Company on:

(i) activities intended to ascertain the credit needs of its community, including the extent of the bank's efforts to

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\* This section is currently codified at ARK. CODE ANN. § 23-32-1804 (Adv. Code Ser. 2 1988).



communicate with members of its community regarding the credit services being provided;

(ii) the extent of intended marketing and special credit-related programs to make members of the community aware of the credit services offered by it;

(iii) the extent of intended participation by the bank subsidiaries' board of directors in formulating the banks' policies and reviewing their performance with respect to the purposes of the federal Community Reinvestment Act of 1977;

(iv) any intended practices to discourage applications for types of credit offered by the banks;

(v) the intended geographic distribution of the banks' credit extensions, credit applications and credit denials;

(vi) the banks' intended participation, including investments, in local community development and redevelopment projects or programs including, but not limited to school district bonds, industrial revenue bonds, hospital bonds, water and sewer bonds, drainage district bonds and other improvement district bonds;

(vii) the banks' intended origination of residential mortgage loans, housing rehabilitation loans, home improvement loans and small business or small farm loans within its community or the purchase of such loans originated in its community;

(viii) the banks' intended participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small business or small farms; and

(ix) the banks' ability and intention to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.

(b) The application shall include, where applicable, historical information concerning its existing subsidiary banks on all items required under subparagraph (a)(i) through (ix) above.

(c) (1) The information required in subparagraph (a) above shall be updated in annual reports submitted to the Commissioner. Such annual reports shall detail the Regional Bank Holding Company's compliance with the policies, plans and intentions contained in the application, the impact of such policies and plans on bringing net new benefits to Arkansas and shall be in such form and otherwise contain such additional information as the Commissioner may require.

(2) The Commissioner may review at any time the activi-

ties of a Regional Bank Holding Company and Arkansas Bank Holding Company and its Arkansas subsidiaries to determine whether the Regional Bank Holding Company and subsidiaries have fulfilled the commitments made pursuant to its application on its policies and plans for bringing new benefits to Arkansas and whether the Arkansas Bank Holding Company and its subsidiaries are fulfilling their obligations to the public to provide financial services on a competitive basis to meet the convenience and needs of the communities served by them. The Commissioner may require a Regional Bank Holding Company and Arkansas Bank Holding Company to make such additional reports that are found necessary to make a determination of whether such commitments and obligations are being met.

(3) Upon the determination of finding that a Regional Bank Holding Company or Arkansas Bank Holding Company has failed to substantially meet the commitments for policies and plans on bringing new benefits to Arkansas contained in the application or the obligations to the community the Commissioner may, after at least a twenty-day notice of such failure by the Commissioner to the Regional Bank Holding Company or Arkansas Bank Holding Company, hold a public hearing on the issue of whether the Regional Bank Holding Company or Arkansas Bank Holding Company has met such commitments and obligations. If after the public hearing a determination is made that such commitments and obligations are not being met, then the Commissioner may assess civil money penalties against or require divestiture by the Regional Bank Holding Company or Arkansas Bank Holding Company. The civil money penalties shall be assessed through a cease and desist order issued according to the Commissioner's authority, and may be assessed at a rate of up to \$10,000.00 per day of violation. The order of divestiture shall be entered by the Commissioner only after a finding of flagrant and continued failure by an entity to fulfill commitments or obligations and shall require such divestiture in not less than two (2) years. The Commissioner shall have the right to waive or suspend such assessment or order of divestiture after issuance on terms that are just based upon corrective action by the entity penalized.

(4) The Commissioner may, from time to time issue such regulations as are reasonable and necessary to define the continuing obligation of both Regional and Arkansas Bank Holding Companies to meet their obligations to the public to provide financial services on a competitive basis to meet the convenience and needs of the communities served by them, and may enforce such regulations by the use of

cease and desist orders assessing fines and requiring divestiture on the same terms as set out in subparagraph (3) above.

(d) A Regional Bank Holding Company is authorized to acquire an Arkansas Bank or Arkansas Bank Holding Company upon approval by the Commissioner, which approval:

(1) determines that the application submitted pursuant to paragraph (a) of this Section is complete and contains information adequately responding to the topics set out in paragraphs (a) and (b) of this Section;

(2) determines that the laws of the State in which the Regional Bank Holding Company has its principal place of business permit Arkansas Bank Holding Companies to acquire Banks and Bank Holding Companies in that state;

(3) determines that the laws of the State in which the Regional Bank Holding Company has its principal place of business permit the Regional Bank Holding Company to be acquired by the Arkansas Bank Holding Company, or Arkansas Bank, sought to be acquired. For the purposes of this subsection, the Arkansas Bank shall be considered as if it were an Arkansas Bank Holding Company;

(4) determines that the Arkansas Bank sought to be acquired has been in existence and continuously operating for more than ten (10) years or that all of the bank subsidiaries of the Arkansas Bank Holding Company sought to be acquired have been in existence and continuously operating for more than ten (10) years;

(5) determines that notice of intent to acquire has been published in a newspaper of general paid circulation in the county or counties in which the Bank or Bank Holding Company to be acquired has its principal place of business and in each county where the Bank or subsidiaries of a Bank Holding Company has branches, and that a notice of intent to acquire has been mailed via certified mail to each person owning stock in the Bank or Bank Holding Company to be acquired; and

(6) makes the acquisition subject to any conditions, restrictions, and requirements that would apply to the acquisition by an Arkansas Bank Holding Company of a Bank or Bank Holding Company in the State where the Regional Bank Holding Company has its principal place of business, which conditions, restrictions, and requirements would not apply to acquisitions by Bank Holding Companies all of whose bank subsidiaries are located in that State.

(e) A Bank Holding Company controlling an Arkansas Bank or Arkansas Bank Holding Company prior to the date of enactment of this Act or a Regional Bank Holding Company having an Arkan-

as Bank subsidiary or Arkansas Bank Holding Company subsidiary which was not acquired pursuant to the provisions of Sections 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. § 1730a(m) or 12 U.S.C. § 1823(f), or was not acquired in the regular course of securing or collecting a debt previously contracted in good faith as provided in Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1842(a), is authorized to acquire an Arkansas Bank or Arkansas Bank Holding Company pursuant to the laws and rules applicable to acquisitions of Arkansas Banks and Arkansas Bank Holding Companies by a Bank Holding Company all of whose Bank subsidiaries are located in this State. Control of a Bank or corporation organized under the laws of the United States or of any State and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§ 601 through 604a or 12 U.S.C. §§ 611 through 631, shall not constitute control of an Arkansas Bank for the purposes of this paragraph. An acquisition authorized by this paragraph shall not require the approval of the Commissioner as provided in paragraph (d).

**23-32-1804. Prohibited Transactions; Divestiture.\*\***

(a) Except as expressly permitted by federal law, no Bank Holding Company that is not an Arkansas Bank Holding Company or a Regional Bank Holding Company shall acquire an Arkansas Bank or Arkansas Bank Holding Company.

(b) An Arkansas Bank Holding Company or Regional Bank Holding Company that ceases to be an Arkansas Bank Holding Company or Regional Bank Holding Company, as defined in this Act, shall within two (2) years divest itself of all Arkansas Banks and Arkansas Bank Holding Companies. However, a Regional Bank Holding Company or Arkansas Bank Holding Company shall not be required to divest its Arkansas Banks or Bank Holding Companies because of:

(1) its acquisition of institutions in another state not within the Region, if such acquisition has been consummated pursuant to the provisions of Section 116 or 123 of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. § 1730a(m) or 12 U.S.C. § 1823(f);

(2) its acquisition of a Bank having banking offices in a State other than within the Region, if such acquisition has been consum-

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\*\* This section is currently codified at ARK. CODE ANN. § 23-32-1805 (Adv. Code Ser. 2 1988).

mated in the regular course of securing or collecting a debt previously contracted in good faith, as provided in Section 3(a) of the federal Bank Holding Company Act of 1956, as amended 12 U.S.C. § 1842(a), if the Bank or Bank Holding Company divests the securities or assets acquired within two (2) years of the date of acquisition;

(3) its acquisition of a Bank or corporation organized under the laws of the United States or of any state and operating under Section 25 or Section 25(a) of the Federal Reserve Act, as amended, 12 U.S.C. §§ 601 through 604a or 12 U.S.C. §§ 611 through 631, or a Bank or Bank Holding Company organized under the laws of a foreign country that is principally engaged in business outside the United States and which either has no banking office in the United States that are engaged only in business activities permissible for a Bank or corporation operating under Sections 25 or 25(a) of the Federal Reserve Act, as amended; or

(4) an increase in deposits in bank subsidiaries not within the Region, provided that such increase is not the result of acquisition of a Bank or Bank Holding Company.

(c) The Commissioner shall have the power to enforce the prohibition of this Act through the imposition of fines and penalties, the issuance of cease and desist orders, and such other remedies as are provided by law.

23-32-1805.\*\*\* Applicable Law. Any Regional Bank Holding Company which controls an Arkansas Bank or an Arkansas Bank Holding Company shall be subject to such laws of this State and such rules of its agencies relating to the acquisition, ownership, and operation of Banks and Bank Holding Companies as are applicable to Arkansas Bank Holding Companies.

(a) The Commissioner shall administer and carry out the provisions of this Act and may issue such rules, regulations and orders as may be necessary to discharge this duty and to prevent evasions of this Act. Any Regional Bank Holding Company that controls an Arkansas Bank shall be subject to such rules, regulations, and orders.

(b) The Commissioner shall require an application fee of any applicant to acquire an Arkansas Bank or Arkansas Bank Holding Company of not less than \$1,000.00 nor more than \$10,000.00, to be determined by such rule, regulation or order of the Commissioner as may be necessary.

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\*\*\* This section is currently codified at ARK CODE ANN. § 23-32-1803 (Adv. Code Ser. 2 1988).

(c) Any Regional Bank Holding Company that has an Arkansas bank subsidiary and that is not organized under the laws of this state shall: (i) qualify to do business in this State, (ii) advise the Commissioner of the location of its registered office within this State and the name of its initial registered agent at such location, (iii) agree to be bound by all the provisions of this Act, and (iv) promptly advise the Commissioner of any changes in its registered office and registered agent.

(d) The Commissioner may enter into cooperative and reciprocal agreements with the bank regulatory authorities of any State for the periodic examination of Bank Holding Companies and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The Commissioner may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this Act and assure compliance with the laws of this state.

(e) Any Regional Bank Holding Company or any subsidiary thereof which willfully violates any provision of this Act or any regulation or order issued by the Commissioner pursuant thereto shall upon conviction be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each day during which the violation continues. Any individual who willfully participates in a violation of any provision of this Act shall upon conviction be fined not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00) or imprisoned not more than one (1) year, or both.”

## SECTION 2. Branching De Novo Definition.

Section 23-32-1201(3) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

“(3) ‘De novo charter’ shall mean a charter for a bank which has been issued for less than ten (10) years.”

## SECTION 3. Bank Holding Company De Novo Definition.

Section 23-32-303(4) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

“(4) ‘De novo charter’ means a charter for a bank for which application was filed after December 31, 1982, and which has been in existence for less than ten (10) years, but it does not include a char-

ter which is issued in connection with the acquisition of assets and liabilities from a predecessor financial institution.”

#### SECTION 4. Branch Bank Locations.

Section 23-32-1202 of the Arkansas Code of 1987 Annotated is hereby amended to read as follows:

“23-32-1202. (a) No banking institution shall engage in the business of banking at any location other than at a principal banking office or branch bank in this state except as otherwise permitted by law.

(b) Any bank may establish a full service branch and/or establish, maintain and use a customer-bank communication terminal (as such term is defined in 23-32-1301 Arkansas Code of 1987 Annotated); provided that its supervisory banking authority approves its application for such full service branch. Full service branches and/or customer-bank communication terminals may only be established as follows:

(1) A bank may establish full service branches and/or customer-bank communication terminals anywhere within the county in which such establishing bank's principal banking office is located.

(2) A bank which relocates its principal banking office may continue to use its former principal banking office location as a full service branch and/or customer-bank communication terminal so long as such use as a banking facility is uninterrupted.

(3) In addition to the above subsections, after December 31, 1993, a bank may locate one or more full service branches and/or customer-bank communication terminals anywhere within any counties contiguous to the county in which its principal banking office is located.

(4) After December 31, 1998, a bank may locate one or more full service branches and/or customer-bank communication terminals anywhere in this state.

(c) Without regard to the exceptions for location of a branch bank and/or customer-bank communication terminals as provided in this Section, a bank may purchase the business and assets and assume the liabilities of, or merge or consolidate with, another bank located in any incorporated city or town within this state and operate the acquired bank as a full service branch and/or customer-bank communication terminals, provided that full service branches and/or customer-bank communication terminals shall not be established pursuant to

purchase, merger or consolidation with another bank should either bank have a de novo charter.

(d) None of the provisions of this Section which restrict the locations in which branch banks shall be established will be effective in emergency instances in which the purchase and assumption of the assets and liabilities of a 'failed' or 'failing' (less than three (3) percent capital-to-asset ratio) bank becomes necessary due to state or federal regulatory action.

(e) Any bank may relocate any existing branch to another location then authorized by law. The intent to make such relocation shall be conveyed in writing to the Commissioner no later than twenty business days before such relocation shall occur. Such written notice shall contain such information concerning the new location as the Commissioner may by regulation require. No fee shall be required with such notice. The Commissioner shall approve such relocation unless he finds that such relocation is not economically feasible or will not serve the public convenience and necessity. Such relocation shall not occur until the Commissioner shall approve the relocation."

#### SECTION 5. Order of the Commissioner.

Section 23-32-1203(f) Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"(f) The Commissioner's decision on a branch bank application will be in the form of final findings of fact and conclusions of law and an order given by the Commissioner within a reasonable time period following the expiration of the fifteen (15) calendar day formal protest period. Such findings of fact shall include findings that:

- (1) Public convenience and necessity will be promoted by the establishment of the proposed full service branch;
- (2) Local conditions assure reasonable promise of successful operation of the proposed full service branch; and
- (3) Suitable physical facilities will be provided for the full service branch."

#### SECTION 6. Use of Existing Facilities.

Section 23-32-1204 Arkansas Code of 1987 Annotated is hereby amended to read as follows:

"23-32-1204. Any bank may, at its option, operate any branch office, teller's window, or other banking facility which is separate from the main office of the bank and in operation on June 30, 1988 as a full service branch or a customer-bank communications terminal."



**SECTION 7. Savings and Loan Association Branch Locations.**

Section 23-37-404 of the Arkansas Code of 1987 Annotated is hereby amended to add the following subsections:

“(e) Any association legally chartered by the proper state authority may establish one (1) or more full service branches; provided that its supervisory authority approves, in the following locations:

(1) An association may establish branch offices anywhere within the county in which such establishing savings and loan association’s principal office is located.

(2) In addition to the above section, after December 31, 1993, an association may locate branches anywhere within any counties contiguous to the county in which its principal office is located.

(3) After December 31, 1998, an association may locate branches anywhere within this state.

(f) Without regard to the exceptions for location of a branch of an association as provided in this Section, an association may purchase the business and assets and assume the liabilities of, or merge or consolidate with, another association located in any incorporated city or town within this state and operate the acquired association as a branch, provided that a branch shall not be established pursuant to purchase, merger or consolidation with another association should either association have a De Novo Charter. For purposes of this Section, the term ‘De Novo Charter’ means a charter for an association which has been in existence for less than ten (10) years. Provided, a ‘De Novo Charter’ does not include a charter which is issued in connection with the acquisition of assets and liabilities from a predecessor financial institution which is acquired through federal or state regulatory action.

(g) Nothing herein contained shall be construed to prevent any association from retaining branch locations, wherever located, in operation prior to June 30, 1988.”

**SECTION 8. Amend Section 23-37-401(4), Arkansas Code of 1987 Annotated.**

Section 23-37-401(4), Arkansas Code of 1987 Annotated, is hereby amended to read as follows:

“(4) Adopt any business practice, procedure, method or system authorized by a federal association doing business in this state except

nothing herein will permit an extension of state savings and loan association's branching authority beyond the limitations of state law."

**SECTION 9.** Amend Section 23-33-104, Arkansas Code of 1987 Annotated.

Section 23-33-104 of the Arkansas Code of 1987 Annotated, is hereby amended to read as follows:

"23-33-104. (a) Notwithstanding any other provisions of the banking laws of this state, upon a determination by the Bank Commissioner that a state bank is in such an impaired condition that it may fail, the Bank Commissioner may approve the sale of assets and assumption of liabilities, merger, or consolidation of the failing state bank or its holding company, if any, by another bank or a bank holding company. In considering transactions under this Section, the Commissioner shall consider the need to minimize disruption in providing banking services to the community involved and the need to preserve the strength, safety and soundness of the banking system.

(b) The Bank Commissioner may authorize purchases, mergers, or consolidations under this Section by considering applications in the following order:

(1) Between a failing bank and a bank or bank holding company whose principal banking office is in the same city or town;

(2) Between a failing bank and a bank or bank holding company whose principal banking office is in the same county;

(3) Between a failing bank and a bank or bank holding company whose principal banking office is in an adjacent county;

(4) Between a failing bank and a bank or bank holding company whose principal banking office is located in any part of the State of Arkansas;

(5) Between a failing bank and a bank or bank holding company whose principal banking office is located in any state which is a member of the region included in the regional reciprocal banking laws of this state.

(6) Between a group of individuals, the majority of who are residents of the banking region, as defined in the regional reciprocal banking laws of this state.

(c) For the purposes of this Section and no other, the Bank Commissioner may determine that a state bank is a failing bank if all the following exist:

(1) It has an adjusted capital to assets ratio of less than three

percent, according to an examination by the State Bank Department or the Federal Deposit Insurance Corporation.

(2) It is the conclusion of the Bank Commissioner that the bank has major and serious problems or unsafe and unsound conditions which are not being satisfactorily addressed or resolved.

(3) It is the conclusion of the Bank Commissioner that the bank has a high potential for failure, although failure is not necessarily imminent, that its failure is predictably inevitable and its shareholders and directors have been unable to sufficiently recapitalize the bank.

(d) Upon an acquisition of a failing bank as authorized by this Section, the acquiring or surviving entity may do any of the following:

(1) Retain and operate as a branch bank any existing office and any full service branch of the acquired bank.

(2) Apply for additional branches in the county in which the principal banking office of the acquired bank is located in the same manner authorized to any other bank.

(3) Merge the acquired bank with a bank subsidiary of the acquirer or itself, if it is a bank at any time following the acquisition. After such a merger, the surviving bank may utilize Paragraphs (1) and (2) of this Subsection.

(e) Nothing contained herein shall be construed to alter, amend or repeal the provisions or procedures for rights of minority shareholders, mergers and consolidations under normal conditions, branching authority for banks or for emergency acquisition procedures for failed banks.”

#### SECTION 10. Emergency.

It is hereby found and determined by the General Assembly that changes in the banking industry, and changes in the Federal banking laws, make it immediately necessary to amend the banking laws of this state to permit Arkansas banking institutions to maintain their competitive position with banks in the region and to make available a supply of funds needed for the community, business and economic expansion of this state through regional reciprocal interstate banking; that amendments to the branch banking laws of the state are immediately necessary to authorize county-wide branch banking and to provide for the orderly expansion of branch banking, after a period of time, outside the county, and to authorize statewide branch banking after a defined period of time; that clarification is needed with respect to existing laws of this state relating to state-chartered savings and loan associations; that clarification of the laws governing the author-

ity of the Bank Commissioner to make orderly and sound decisions related to failed and failing banks if necessary to protect the public of this state against financial losses; and that the immediate passage of this Act is necessary for the clarification of the banking laws to preserve the safety and soundness of the Arkansas state banking system. Therefore an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety should be in force and effective as follows: Section 1 of this Act shall be effective the earlier of (i) January 1, 1989, or (ii) the date on which a state or states having twenty percent (20%) or more of the total deposits of Banks within the Region, excluding Arkansas, have enacted and have in effect statutes which permit Arkansas Bank Holding Companies to acquire Banks and Bank Holding Companies in such state, whichever occurs sooner. For purposes of this Section, the total deposits of Banks within the Region shall be determined by the Bank Commissioner of the State of Arkansas by reference to the Spring 1988 issue of Polk's World Bank Directory, published by R. L. Polk and Company. The remaining Sections of this Act shall be effective immediately upon its passage and approval.

