

Act 195 of the 1989 Regular Session.

Act 195

SB19

By: Senator Yates

"AN ACT TO ALLOW BANK HOLDING COMPANIES TO CREATE, FORM, AND ESTABLISH SUBSIDIARY TRUST COMPANIES; AND FOR OTHER PURPOSES."

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

SECTION 1. This act shall be known as the "Bank Holding Company Subsidiary Trust Company Formation Act of 1989."

SECTION 2. The General Assembly of the State of Arkansas finds that it would be in the best interest of the population of Arkansas to permit bank holding companies to create, form, and establish subsidiary trust companies to the extent provided in this act in order to improve customer service, significantly reduce overhead costs, and improve their ability to meet increased competition.

SECTION 3. For purposes of this act:

(1) "Affiliated bank" means a state or national bank, having its main office in this state, more than fifty (50) percent of the voting stock of which is owned directly or indirectly by:

(A) the same bank holding company that owns more than fifty (50) percent of the voting stock of a subsidiary trust company; or

(B) by the same five (5) or fewer persons who are individuals, estates, or trusts that own directly or indirectly more than fifty (50) percent of the voting stock of the bank holding company described in subsection (1)(A) of this section, taking into account the stock ownership of each such person only to the extent such ownership is identical with respect to each of the bank and the bank holding company.

(2) "Subsidiary trust company" means a corporation organized to conduct trust business and business incidental to trust business, having its main office in this state, of which more than fifty (50) percent of the voting stock is owned directly or indirectly by an Arkansas bank holding company as defined by Arkansas Code Annotated 23-32-301 et seq.

SECTION 4. (a) Arkansas bank holding companies are authorized and empowered by the provisions of this act to create, form, and establish subsidiary trust companies for the purpose of combining the trust operations of their affiliated banks into a single trust operation.

(b) The newly formed subsidiary trust company shall only have the ability to conduct trust business that could be conducted by the individual trust departments combined from the affiliated banks to create the subsidiary trust company.

(c) Offices of subsidiary trust companies may be located only in those communities where its affiliated banks or their branches are located.

SECTION 5. (a) A subsidiary trust company and one or more of its affiliated banks may enter into one or more agreements under which the subsidiary trust company is substituted as fiduciary for each affiliated bank in each fiduciary account listed in the agreement. The agreement shall be

filed with the Bank Commissioner before the effective date of the substitution and must include:

(1) A list of each fiduciary account for which substitution is requested; and

(2) The effective date of the substitution, which may not be less than ninety (90) days after the date of the agreement.

(b) Not later than ninety (90) days before the effective date of a substitution under this section, the parties to the substitution agreement shall send written notice of the substitution to the following:

(1) Each person who is readily ascertainable as a beneficiary of the account because of the receipt of statements of account by the person, or in the case of a minor beneficiary, by a parent, conservator, or guardian of the minor beneficiary;

(2) Each cofiduciary;

(3) Each surviving settlor of a trust;

(4) Each issuer of a security for which the affiliated bank administers a fiduciary account;

(5) The plan sponsor of each employee benefit plan;

(6) The principal of each agency account; and

(7) The guardian of the person of each ward under guardianship.

(c) The notice must be sent by United States mail to the person's current address as shown on the fiduciary records. If the fiduciary has no address for the person on its records, the fiduciary shall make a reasonable attempt to ascertain the person's current address. The notice must disclose the person's rights with respect to objecting to the transfer of the fiduciary account, and the liability of the existing fiduciary and the substitute fiduciary for their actions. Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice does not impair the validity or effect of substitution. If a substitution of a subsidiary trust company is ineffective because of a defect in required notice, the actions taken by the subsidiary trust company before the determination of the invalidity of the substitution are valid if the actions would have been valid if performed by the affiliated bank.

(d) Except as provided by this subsection, the prospective designation in a will or other instrument of the affiliated bank as fiduciary is considered designation of the subsidiary trust company, and any grant in the will or other instrument of any discretionary power is considered conferred on the subsidiary trust company. However, the affiliated bank and subsidiary trust company may agree in writing to have the designation of the affiliated bank as fiduciary be binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this act.

(e) Substitution under this section is effective for all purposes on the effective date stated in the agreement between the subsidiary trust company and the affiliated bank, unless, not later than fifteen (15) days before the effective date a party entitled to notice of the substitution under subsection (b) of this section files a written petition in a court of competent jurisdiction seeking to have the substitution denied under Section 6 of this act and provides the affiliated bank with a copy of the filed petition.

(f) If a petition is filed and notice is given under subsection (e) of this section, the substitution takes effect when the petition is withdrawn or dismissed or when the court enters a final order denying the relief sought.

(g) On the effective date the subsidiary trust company succeeds to all right, title, and interest in all property that the affiliated bank holds as fiduciary, except property held for accounts for which there has been no substitution under this act, without the necessity of any instrument of

transfer or conveyance, and the subsidiary trust company shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and obligations and exercise all the powers and authority connected with or incidental to that fiduciary capacity in the same manner as if the subsidiary trust company had been originally named or designated fiduciary. However, the affiliated bank is responsible and liable for all actions taken by it while it acted as fiduciary.

SECTION 6. (a) A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the Bank Commissioner before the effective date stated in the agreement.

(b) The substitution of a subsidiary trust company as fiduciary of an account may be denied if the court having jurisdiction, on notice and hearing, determines that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account.

(c) Subsection (b) of this section is cumulative to any applicable provision for removal of a fiduciary or appointment of a successor fiduciary under Arkansas law or in the instrument creating the fiduciary relationship.

(d) In any proceeding under this section the court may award costs and reasonable and necessary attorney's fees as the court considers equitable and just.

SECTION 7. (a) A subsidiary trust company may deposit with an affiliated bank fiduciary funds that are being held pending investment, distribution, or payment of debts.

(b) A subsidiary trust company may deposit with an affiliated bank fiduciary funds as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust.

SECTION 8. (a) The subsidiary trust company's owning bank holding company shall file with the Bank Commissioner an irrevocable undertaking to be fully responsible for the existing and future fiduciary acts and omissions of its subsidiary trust company.

(b) If an affiliated bank has given bond to secure performance of its duties and the subsidiary trust company qualifies as successor fiduciary, the subsidiary trust company shall give bond to secure performance of its duties in the same manner.

SECTION 9. For the purposes of qualification as successor fiduciary under any requirements contained in any document creating a fiduciary account or any statute of this state relating to fiduciary accounts, the subsidiary trust company:

(1) Is considered to have capital and surplus equal to its capital and surplus plus the capital and surplus of its owning bank holding company; and

(2) Shall be treated as a national bank, unless:

(A) It is not a national bank under federal law relating to national banks; and

(B) It has not entered into a substitution agreement with an affiliated bank that is a national bank under federal law relating to national banks.

SECTION 10. The Bank Commissioner, with the approval of the State Banking Board, shall have the powers to issue rules and regulations as may be necessary to carry out the intent and purpose of this Act.

SECTION 11. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.

APPROVED: February 24, 1989

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