

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 560

By: Senators Gibson and Bookout

"AN ACT TO AMEND SECTION 6 OF ACT 113 OF 1913, AS AMENDED, [ARK. STAT. 67-109], SECTION 10 OF ARK 113 OF 1913, AS AMENDED, [ARK. STAT. 67-112] SECTION 19 OF ACT 113 OF 1913, AS AMENDED [ARK. STAT. 67-309], AND SECTION 23 OF ACT 179 OF 1969, AS AMENDED, [ARK. STAT. 67-309.2], TO AUTHORIZE THE BANK COMMISSIONER TO HAVE REGULATORY AUTHORITY TO EXAMINE, REGULATE, TRANSFER STOCK, AND TAKE SUPERVISORY ACTION AGAINST BANK HOLDING COMPANIES, AND FOR OTHER PURPOSES."

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

SECTION 1. Section 6 of Act 113 of 1913 as amended, the same being Arkansas Statutes 67-109, is hereby amended to read as follows:

"SECTION 6. (A) The Bank Commissioner shall be charged with the execution of all laws passed by the State of Arkansas relating to the organization, inspection, supervision, control, liquidation and dissolution of banks, bank holding companies, trust companies, industrial loan institutions, finance companies, and the banking business of the State, and such other duties as may be enjoined upon said department or Commissioner. The Bank Commissioner shall have the power to make rules and regulations as may be necessary to carry out the intent and purposes of all such laws and to issue cease and desist orders against any State bank, bank holding company owning a subsidiary subject to regulation by the State Bank Department, trust company, industrial loan institution, or other financial institution or an officer or director of any of the financial institutions subject to the supervision of the Bank Commissioner found to be violating the banking laws of this State, the rules and regulations of the Commissioner or jeopardizing the safety and soundness of the financial institution.

The Bank Commissioner may, pursuant to a cease and desist order issued against a financial institution under his regulatory authority, remove an officer or director from service to that institution if he/she is found to be violating state or federal law, State Bank Department Rules and Regulations, or otherwise impairing the safety and soundness of the financial institution. He may be removed by the Governor for cause. In case of death, removal or resignation of the Commissioner, the Governor, by and with the advice and consent of the Senate, shall appoint his successor, who shall serve for the remainder of the term fixed by law. Provided, however, that the Bank Commissioner may issue rules or regulations only with the approval and consent of the State Banking Board; but the Bank Commissioner shall have power to issue cease and desist orders of his own motion.

Any institution or officer or director of such a financial institution referred to in this Act that shall refuse or fail to comply with the terms of a cease and desist order issued by the Bank Commissioner may be assessed a monetary penalty after a ten (10) day notice given by the Bank Commissioner to the institution and/or each officer or director thereof for its failure to comply with the provisions of the cease and desist order. The amount of such monetary penalty shall be One Thousand Dollars (\$1,000) per day of violation against each institution and/or each officer and director contributing to the institution's failure to comply with the provisions of the cease and desist order.

(B) Rules, regulations or orders promulgated by the Bank Commissioner, with the approval of the State Banking Board, shall forthwith after promulgation be circularized in form and method selected by the Bank Commissioner to all State and national banks chartered in the State of Arkansas."

SECTION 2. Section 10 of Act 113 of 1913, as amended, the same being Arkansas Statutes 67-112 is hereby amended to read as follows:

"SECTION 10. Whenever the word bank appears in this Act, it shall be deemed to apply alike to any incorporated bank, bank holding company, trust company or industrial loan institution, other than cooperative banks organized under provisions of Act 632 of the Acts of the General Assembly of 1921 and also to any partnership or individual transacting a banking business."

SECTION 3. Section 19 of Act 113 of 1913, as amended, the same being Arkansas Statute 67-309, is hereby amended to read as follows:

"SECTION 19. The affairs of any incorporated bank organized under the laws of this State shall be managed and controlled by a Board of Directors of not less than three (3), who shall be selected from either stockholders of the bank, or of its bank holding company, as defined in Section 3 of Act 128 of 1983 and Section 1 of Act 435 of 1983 (Ark. Stat. 67-2110), at such times and in such manner as may be provided by its bylaws. In electing directors and deciding questions at meetings of stockholders, each stockholder of a bank incorporated under the laws of the State of Arkansas shall have a right to vote the number of shares owned by him for as many persons or issues as there are directors to be elected or issues to be voted upon, or to cumulate said shares so as to give one (1) candidate or one (1) issue as many votes as the number of directors or issues multiplied by the number of shares of stock held by him shall equal; or to distribute said votes on the same principle among as many candidates or issues as he shall see fit, unless it is provided otherwise in the Article of Agreement and Association or the Bylaws of said bank.

No person shall be eligible to serve as a director of any bank organized under the laws of this State, unless he shall be a bona fide owner of stock fully paid up and not hypothecated amounting to either a minimum par value of five hundred dollars (\$500) or owning fifty (50) shares of stock of such bank, or of a bank holding company which owns fifty-one percent (51%) of the stock in such state bank. The Board shall select from their number a president and such number of vice presidents as shall be provided in the Bylaws, and elect a secretary and treasurer and cashier, all of which may be one and the same person, and may select such vice presidents, assistant cashiers, secretaries and treasurers and other officers as may be authorized by the Bylaws. Such officers shall hold their offices for a term of one (1) year and until successors are elected and qualified unless sooner removed by the Board. The Board shall require such bonds of the officers as it shall deem proper and necessary to protect the funds of the bank. Any officer or director found by the Commissioner to be violating state or federal law, State Bank Department Rules and Regulations, or basic principals of safety and soundness in the operation of a bank may be reported in writing to the directors of the bank of which he is an officer, or the Commissioner may cause such officer or director to be

removed from service to the institution by means of his own cease and desist order issued against the bank and its Board of Directors."

SECTION 4. Section 23 of Act 179 of 1969, as amended, the same being Arkansas Statutes 67-309.2, is hereby amended to read as follows:

"SECTION 23. (a) No person shall be eligible to serve as a director of any bank organized or existing under the laws of this State unless he shall be a bona fide owner in his individual name, not jointly, of stock fully paid up and not hypothecated amounting to either a minimum per value of five hundred dollars (\$500) or owning fifty (50) shares of stock of such bank or of a bank holding company which owns fifty-one percent (51%) of the stock in such state bank.

(b) When any number of shares of the stock of a bank organized under the laws of this State or shares of stock in a bank holding company that control ten percent (10%) or more of the stock in a state bank shall be transferred to any transferee or joint transferees, the bank, or bank holding company, shall promptly transmit to the Bank Commissioner a certificate (on a form prescribed by the Bank Commissioner) showing such transfer. Said certificate also shall show the total number of shares at that time outstanding in the name of the transferee(s) or any one known by the bank or bank holding company to be the nominee(s) of said transferee(s) or holding in trust for the transferee(s). No approval by the Bank Commissioner of any transfer of ownership shall be required unless and until:

(i) a transfer reported to the Bank Commissioner will result in the ownership by the transferee(s) and/or any nominee of the transferee(s) and/or any person (s) holding in trust for the transferee(s) of 10% or more of the capital stock of the bank, or bank holding company, or

(ii) a transfer reported to the Bank Commissioner will increase a then existing ownership of 10% or more held as set out in the last preceding subparagraph;

but either of the situations set out in (i) and (ii) above all shares held in such ownership may not be voted unless such ownership, and the transfers mentioned in (i) and (ii), shall be approved by the Bank Commissioner and his approval given to the bank in writing."

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly of the State of Arkansas that there exists a present need to enforce the provisions of cease and desist orders, examination authority, and transfers of bank holding company stock on bank holding companies as well as officers and directors of financial institutions under the regulatory authority of the Bank Commissioner. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

