

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 418

5 By: Senator J. Dismang
6 By: Representative Maddox
7

For An Act To Be Entitled

9 AN ACT TO TRANSFER THE ADMINISTRATIVE FUNCTIONS OF
10 THE STATE SECURITIES DEPARTMENT TO THE STATE BANK
11 DEPARTMENT; TO AMEND THE LAW CONCERNING THE
12 ORGANIZATION OF THE STATE SECURITIES DEPARTMENT; AND
13 FOR OTHER PURPOSES.
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Subtitle

16 TO TRANSFER THE ADMINISTRATIVE FUNCTIONS
17 OF THE STATE SECURITIES DEPARTMENT TO THE
18 STATE BANK DEPARTMENT; AND TO AMEND THE
19 LAW CONCERNING THE ORGANIZATION OF THE
20 STATE SECURITIES DEPARTMENT.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. DO NOT CODIFY. Transfer of administrative functions of
27 State Securities Department to State Bank Department.

28 (a) The administrative functions of the State Securities Department
29 are transferred within the Department of Commerce to the State Bank
30 Department.

31 (b) The statutory authority, powers, duties, functions, records,
32 personnel, property, and unexpended balances of appropriations, allocations,
33 and other funds, including the functions of budgeting or purchasing of the
34 State Securities Department remain with the State Securities Department
35 subsequent to the transfer under subsection (a) of this section.

36 (c)(1) The transfer under subsection (a) of this section does not



1 affect the orders, rules, directives, registration, licensing, or standards
2 made or promulgated by the State Securities Department before or after the
3 effective date of this act.

4 (2) The orders, rules, directives, registration, licensing, or
5 standards of the State Securities Department shall continue to be in effect
6 until they are amended or repealed under authority given by law.

7
8 SECTION 2. Arkansas Code § 4-30-207(a), the authority of the
9 Securities Commissioner over certain cooperative banks, is amended to read as
10 follows:

11 (a)(1) Every cooperative bank organized under this chapter prior to
12 March 22, 1937, which is not situated in a city, town, or community in which
13 there is also situated a state or national bank or a teller’s window branch
14 thereof is declared to be an investment company and shall be placed under the
15 regulation and supervision of the State Securities Department, in the same
16 manner as now provided by law for other investment companies.

17 (2) The Securities Commissioner, in consultation with the
18 Secretary of the Department of Commerce and the Bank Commissioner, is
19 authorized, empowered, and directed to make and promulgate all such rules not
20 inconsistent herewith as shall be necessary or convenient for the
21 administration and carrying out of this subchapter and for the supervision
22 and control of all such organizations.

23
24 SECTION 3. Arkansas Code § 15-4-1228 is amended to read as follows:

25 15-4-1228. Investigations by Bank Commissioner ~~or~~ and Securities
26 Commissioner – Injunctions.

27 (a) The Bank Commissioner may investigate, either upon complaint or
28 otherwise, when it appears that a county or regional industrial development
29 company is conducting its business in an unsafe and injurious manner or in
30 violation of this subchapter or the rules promulgated under this subchapter
31 by the Bank Commissioner or when it appears that any person is engaging in
32 the business without being approved under the provisions of this subchapter.

33 (b) The Securities Commissioner, in consultation with the Bank
34 Commissioner, may investigate, either upon complaint or otherwise, when it
35 appears that a county or regional industrial development company is offering
36 its securities in violation of § 15-4-1220 or is otherwise violating the

1 provisions of Arkansas law that come under the jurisdiction of the Securities
2 Commissioner.

3 (c)(1) Subject to the jurisdictional provisions of subsections (a) and
4 (b) of this section, whenever it appears upon sufficient grounds or evidence
5 satisfactory to the Bank Commissioner or the Securities Commissioner, in
6 consultation with the Bank Commissioner, that any county or regional
7 industrial development company has engaged in or is about to engage in any
8 act or practice in violation of this subchapter or any rule or order under
9 this subchapter, or the assets or capital of any county or regional
10 industrial development company is impaired or the county or regional
11 industrial development company's affairs are in an unsafe condition, the Bank
12 Commissioner or the Securities Commissioner, in consultation with the Bank
13 Commissioner, may:

14 (A) Refer the evidence which is available concerning
15 violations of this subchapter or any rule or order under this subchapter to
16 the appropriate agency, which may institute the appropriate corrective action
17 or proceedings with or without the reference; or

18 (B)(i) Summarily order the county or regional industrial
19 development company to cease and desist from the act or practice during the
20 time the Bank Commissioner or the Securities Commissioner, in consultation
21 with the Bank Commissioner, may apply to the Pulaski County Circuit Court to
22 enjoin the act or practice and to enforce compliance with this subchapter or
23 any rule or order under this subchapter.

24 (ii) However, the Bank Commissioner or the
25 Securities Commissioner, in consultation with the Bank Commissioner, may
26 apply directly to the Pulaski County Circuit Court for injunctive relief
27 without issuing a cease and desist order.

28 (2) Upon a proper showing, a permanent or temporary injunction,
29 restraining order, or writ of mandamus shall be granted and a receiver or
30 conservator may be appointed for the county or regional industrial
31 development company or its assets.

32 (3) The court may not require the Bank Commissioner or the
33 Securities Commissioner, in consultation with the Bank Commissioner, to post
34 a bond.

35 (4) In addition to any other remedy provided in this subchapter
36 or under applicable law, the costs of the Bank Commissioner or the Securities

1 Commissioner, in consultation with the Bank Commissioner, incurred in
2 successfully prosecuting violations of this subchapter may be imposed by the
3 court as additional damages payable by the company.

4 (d) A copy of all reports of the investigation or other proceedings
5 conducted pursuant to this section shall be forwarded to the Secretary of the
6 Department of Finance and Administration.

7
8 SECTION 4. Arkansas Code § 18-50-102(a)(2), concerning the authority
9 of the Bank Commissioner or the Securities Commissioner to foreclose on a
10 mortgage or deed of trust, is amended to read as follows:

11 (2) A state-chartered bank, nationally chartered bank, state-
12 chartered or federally chartered savings and loan association, state-
13 chartered or federally chartered credit union, or a mortgage loan company
14 subject to licensing, supervision, and auditing by a federal agency, a
15 government-sponsored enterprise, and the Bank Commissioner or Securities
16 Commissioner, in consultation with the Bank Commissioner, as applicable, as
17 an approved mortgage loan servicer authorized to do business under the laws
18 of the State of Arkansas if the state-chartered bank, nationally chartered
19 bank, state-chartered or federally chartered savings and loan association,
20 state-chartered or federally chartered credit union, or mortgage loan
21 company:

22 (A) Has a physical business location open for business for
23 normal banking hours located within the State of Arkansas;

24 (B) Is either the holder or the mortgage loan servicer for
25 the holder of a note secured by a mortgage or deed of trust; and

26 (C) Does not collect a fee or cost for any action taken
27 under this chapter unless authorized by a court order; or

28
29 SECTION 5. Arkansas Code § 23-35-201 is amended to read as follows:
30 23-35-201. Credit Union Division – State Credit Union Supervisor –
31 Staff.

32 (a) There is created under the State Securities Department a Credit
33 Union Division which shall be administered by the State Credit Union
34 Supervisor. The Securities Commissioner, in consultation with the Secretary
35 of the Department of Commerce and the Bank Commissioner, shall act as State
36 Credit Union Supervisor.

1 **(b)** The supervisor, in consultation with the Secretary of the
2 Department of Commerce and the Bank Commissioner, shall appoint such
3 administrative assistants and examiners as may be necessary to assist in the
4 performance of his or her duties under this chapter.

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6 SECTION 6. Arkansas Code § 23-37-206(b)(1), concerning the Supervisor
7 of Savings and Loan Associations, is amended to read as follows:

8 **(b)(1)(A)** The Securities Commissioner, in consultation with the
9 Secretary of the Department of Commerce and the Bank Commissioner, shall act
10 as Supervisor of Savings and Loan Associations.

11 **(B)** ~~He or she~~ The Securities Commissioner may appoint an
12 assistant securities commissioner responsible for financial institutions to
13 act as the Assistant Supervisor of Savings and Loan Associations and perform
14 all duties delegated by the ~~commissioner~~ Securities Commissioner.

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16 SECTION 7. Arkansas Code § 23-42-201(a), concerning the administration
17 of the State Securities Department by the Securities Commissioner, is amended
18 to read as follows:

19 **(a)(1)** This chapter shall be administered by the Securities
20 Commissioner, ~~who shall be appointed by the Governor and who shall serve at~~
21 ~~the pleasure of the Governor.~~

22 **(2)** ~~The commissioner shall report to the Secretary of the~~
23 ~~Department of Commerce~~ Except as provided in subdivision (a)(3) of this
24 section, the Securities Commissioner shall:

25 **(A)** Be appointed by the Governor and serve at the pleasure
26 of the Governor; and

27 **(B)** Report to the Bank Commissioner.

28 **(3)** The Bank Commissioner may act as the Securities
29 Commissioner.

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31 SECTION 8. Arkansas Code § 25-43-302(a)(26), concerning the state
32 entities within the Department of Commerce is amended to read as follows:

33 **(26)** The State Securities Department, created under the Arkansas
34 Securities Act, § 23-42-101 et seq., within the State Bank Department.