

Stricken language would be deleted from and underlined language would be added to present law.  
Act 237 of the Regular Session

State of Arkansas  
95th General Assembly  
Regular Session, 2025

As Engrossed: S2/17/25

# A Bill

SENATE BILL 230

By: Senator J. Boyd  
By: Representative Achor

## For An Act To Be Entitled

AN ACT TO REPEAL THE ARKANSAS TRUST INSTITUTIONS ACT;  
TO CREATE THE ARKANSAS TRUST INSTITUTIONS ACT OF  
2025; AND FOR OTHER PURPOSES.

### Subtitle

TO REPEAL THE ARKANSAS TRUST  
INSTITUTIONS ACT; AND TO CREATE THE  
ARKANSAS TRUST INSTITUTIONS ACT OF 2025.

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

SECTION 1. Arkansas Code Title 23, Chapter 51, is amended to read as follows:

#### ~~CHAPTER 51~~

#### ~~ARKANSAS TRUST INSTITUTIONS ACT~~

#### ~~Subchapter 1 — Arkansas Trust Institutions Act~~

~~23-51-101. Title.~~

~~This chapter may be cited as the “Arkansas Trust Institutions Act”.~~

~~23-51-102. Certain definitions.~~

~~(a) For the purposes of this chapter:~~

~~(1) “Account” means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee,~~



~~executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity;~~

~~(2) "Act as a fiduciary" or "acting as a fiduciary" means to:~~

~~(A) Accept or execute trusts, including to:~~

~~(i) Act as trustee under a written agreement;~~

~~(ii) Receive money or other property in its capacity~~

~~as trustee for investment in real or personal property;~~

~~(iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;~~

~~(iv) Act as trustee of the estate of a deceased person; or~~

~~(v) Act as trustee for a minor or incapacitated person;~~

~~(B) Administer in any other fiduciary capacity real or tangible personal property; or~~

~~(C) Act pursuant to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;~~

~~(3) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property;~~

~~(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company;~~

~~(5) "Authorized trust institutions" means any state trust company, subsidiary trust company, or trust office of a trust institution located in Arkansas;~~

~~(6) "Bank" means a state bank, national bank, any bank chartered by any state of the United States or any foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;~~

~~(7) "Bank supervisory agency" means:~~

~~(A) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and~~

~~(B) The United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision [abolished] and any successor to these agencies;~~

~~(8) "Branch" with respect to a depository institution has the meaning set forth in § 23-48-702;~~

~~(9) "Capital" means:~~

~~(A) The sum of:~~

~~(i) The par value of all shares of the state trust company having a par value that have been issued;~~

~~(ii) The consideration fixed by the board in the manner provided by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., for all shares of the state trust company without par value that have been issued, except a part of that consideration that:~~

~~(a) Has been actually received;~~

~~(b) Is less than all of that consideration;~~

and

~~(c) The board, by resolution adopted not later than sixty (60) days after the date of issuance of those shares, has allocated to surplus with the prior approval of the commissioner; and~~

~~(iii) An amount not included in subdivisions (a)(9)(A)(i) and (ii) of this section that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less~~

~~(B) All amounts otherwise included in subdivisions (a)(9)(A)(i) and (ii) of this section that are attributable to the issuance of securities by the state trust company and that the commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities;~~

~~(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions which the commissioner may by rule prescribe;~~

~~(11) "Charter" means a charter, license or other authority~~

~~issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state;~~

~~(12) “Client” means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the non-contingent beneficiaries of an account;~~

~~(13) “Commissioner” means the Bank Commissioner then in office and, where appropriate, all of his or her successors and predecessors in office;~~

~~(14) “Company” includes a bank, trust company, subsidiary trust company, corporation, limited liability company, partnership, association, business trust, foundation, or another trust;~~

~~(15) “Control” means:~~

~~(A) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;~~

~~(B) The ability to control the election of a majority of the board of a state trust company or other company; and~~

~~(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the commissioner after notice and an opportunity for hearing;~~

~~(16) “Department” means the State Bank Department;~~

~~(17) “Depository institution” means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of “insured depository institution” as set forth in 12 U.S.C. §§ 1813(c)(2) and (3);~~

~~(18) “Equity capital” means the amount by which the total assets of a state trust company exceed the total liabilities of the state trust company;~~

~~(19) “Equity security” means:~~

~~(A) Stock, other than adjustable rate preferred stock and money market (auction rate) preferred stock;~~

~~(B) A certificate of interest or participation in a~~

~~profit-sharing agreement, collateral trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting trust certificate, or partnership interest;~~

~~(C) A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision (a)(19);~~

~~(D) A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision (a)(19); and~~

~~(E) A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision (a)(19) that evidences an existing or contingent equity ownership interest;~~

~~(20) "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company;~~

~~(21) "Hazardous condition" with respect to a trust company means:~~

~~(A) A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the commissioner;~~

~~(B) Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the commissioner; or~~

~~(C) A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:~~

~~(i) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;~~

~~(ii) Has equity capital less than the amount of capital the trust company is required to maintain under § 23-51-110, or the adequacy of its equity capital is threatened, as determined under regulatory~~

~~accounting principles;~~

~~(iii) Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;~~

~~(iv) Violates or refuses to comply with this chapter, another statute or rule applicable to trust companies, or any final and enforceable order of the commissioner;~~

~~(v) Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or~~

~~(vi) Conducts business in an unsafe or unsound manner, which includes, but is not limited to conducting business with:~~

~~(a) Inexperienced or inattentive management;~~

~~(b) Potentially dangerous operating practices;~~

~~(c) Infrequent or inadequate audits;~~

~~(d) Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;~~

~~(e) Failure to adhere to sound administrative practices;~~

~~(f) Frequent occurrences of violations of laws, rules, or terms of the governing instruments; or~~

~~(g) Engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest;~~

~~(22) "Insider" means:~~

~~(A) Each director, officer or principal shareholder of the trust company;~~

~~(B) Any company controlled by a person described by subdivision (a)(23)(A) of this section; or~~

~~(C) Any person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation;~~

~~(23) "Insolvent" means a circumstance or condition in which a state trust company:~~

~~(A) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;~~

~~(B) Has equity capital less than one million dollars (\$1,000,000), as determined under regulatory accounting principles;~~

~~(C) Fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the commissioner determines that deposit insurance is necessary for the safe and sound operation of the state trust company, or maintains adequate security for its deposits in accordance with § 23-51-130;~~

~~(D) Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by §§ 23-51-150—23-51-155; or~~

~~(E) Attempts to dissolve or liquidate other than as provided by §§ 23-51-156—23-51-161;~~

~~(24) “Investment security” means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit;~~

~~(25) “License” means the authority granted by the commissioner pursuant to this chapter to establish, acquire or maintain a trust office;~~

~~(26) “Loans and extensions of credit” means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person;~~

~~(27) “New trust office” means a trust office located in a host state which:~~

~~(A) Is originally established by the trust institution as a trust office; and~~

~~(B) Does not become a trust office of the trust institution as a result of:~~

~~(i) The acquisition of another trust institution or trust office of another trust institution; or~~

~~(ii) A merger, consolidation, or conversion involving any such trust institution or trust office;~~

~~(28) “Office” with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch;~~

~~(29) “Officer” means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company;~~

~~(30) “Operating subsidiary” means a company for which a state trust company has the ownership, ability, or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than fifty percent (50%) of the outstanding shares of each class of voting securities or its equivalent of the company;~~

~~(31) “Out of state bank” means a bank chartered to act as a fiduciary in any state or states other than this state;~~

~~(32) “Out of state trust company” means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state;~~

~~(33) “Out of state trust institution” means a trust institution that is not a state trust institution;~~

~~(34) “Person” means an individual, a company or any other legal entity;~~

~~(35) “Principal office” with respect to:~~

~~(A) A state trust company, means a location registered with the commissioner as the state trust company’s home office at which:~~

~~(i) The state trust company does business;~~

~~(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and~~

~~(iii) At least one executive officer of the state trust company maintains an office; or~~

~~(B) A trust institution other than a state trust company, means its principal place of business in the United States;~~

~~(36) “Principal shareholder” means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a state trust company or other company;~~

~~(37) “Private trust company” means a trust company that does not engage in a trust business with the general public;~~

~~(38) “Receiver” means the commissioner, an agent of the~~

~~commissioner or any federal or other governmental agency exercising the powers and duties of a receiver pursuant to § 23-51-164;~~

~~(39) “Savings association” means a depository institution that is neither a bank nor a foreign bank;~~

~~(40) “Shareholder” means an owner of a share in a state trust company;~~

~~(41) “Shares” means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences;~~

~~(42) “State” means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands;~~

~~(43) “State bank” means a bank chartered to act as a fiduciary by this state;~~

~~(44) “State trust company” means a corporation organized or reorganized under this chapter;~~

~~(45) “State trust institution” means a trust institution having its principal office in this state;~~

~~(46) “Subsidiary” means a company that is controlled by another person. The term includes a subsidiary of a subsidiary;~~

~~(47) “Subsidiary trust company” means a corporation organized under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq. and authorized by the commissioner pursuant to § 23-47-801 et seq. or the Bank Holding Company Subsidiary Trust Company Formation Act of 1989, § 23-32-1901 et seq. [repealed], to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as that term is defined in § 23-47-801 et seq.;~~

~~(48) “Surplus” means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits;~~

~~(49) “Trust business” means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:~~

~~(A) Acting as a fiduciary, or  
(B) To the extent not acting as a fiduciary, any of the following;~~

~~(i) Receiving for safekeeping personal property of every description;~~

~~(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or~~

~~(iii) Acting as financial advisor, investment advisor or manager, agent or attorney in fact in any agreed upon capacity;~~

~~(50) "Trust company" means a state trust company, subsidiary trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank;~~

~~(51) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client;~~

~~(52) "Trust institution" means a depository institution, state bank or trust company;~~

~~(53) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the commissioner to act as a fiduciary;~~

~~(54)(A) "Unauthorized trust activity" means:~~

~~(i) A company, other than one identified in § 23-51-165(a), acting as a fiduciary within this state;~~

~~(ii) A company engaging in a trust business in this state at any office of the company that is not its principal office, if the company is a state trust institution, or that is not a trust office or a representative trust office of the company; or~~

~~(iii) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the commissioner under § 23-51-182 is in effect.~~

~~(B) "Unauthorized trust activity" does not include a foundation serving as a fiduciary;~~

~~(55) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or~~

~~appropriate board resolutions. The term includes amounts allocated to undivided profits as a result of a merger; and~~

~~(56) “Voting security” means a share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, regardless of whether the right is limited to the election of fewer than all of the board members. The term includes a security that is convertible or exchangeable into a voting security.~~

~~(57)(A) “Foundation” means an organization that:~~

~~(i) Is organized and operated for religious, educational, or charitable purposes, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as it existed on January 1, 2019;~~

~~(ii) Has equity capital of at least one million dollars (\$1,000,000);~~

~~(iii) Has fiduciary liability insurance coverage with policy limits of not less than two million dollars (\$2,000,000);~~

~~(iv) Adopts and maintains written fiduciary policies and procedures;~~

~~(v) Has an annual independent audit that covers fiduciary activities and assets; and~~

~~(vi)(a) Is serving as a fiduciary for a trust or estate whose assets are less than seven hundred fifty thousand dollars (\$750,000).~~

~~(b) Subdivision (a)(57)(A)(vi)(a) of this section does not apply if:~~

~~(1) The foundation is the sole remainder beneficiary of the trust or estate; or~~

~~(2) The remainder beneficiary is an organization that is supported by the foundation.~~

~~(B) “Foundation” does not include a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 509(a).~~

~~(b) These definitions shall be liberally construed to accomplish the purposes of this chapter. The commissioner by rule may adopt other~~

~~definitions to accomplish the purposes of this chapter.~~

~~23-51-103. Rules.~~

~~The Bank Commissioner may promulgate such rules as he or she determines to be necessary or appropriate in order to implement the provisions of this chapter.~~

~~23-51-104. Organization and powers of state trust company.~~

~~(a) Subject to the other provisions of this chapter, one or more persons may organize and charter a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.~~

~~(b) Subject to § 23-51-111, a state trust company may exercise the powers of an Arkansas business corporation reasonably necessary or helpful to enable exercise of its specific powers under this chapter.~~

~~(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.~~

~~(d) Subject to § 23-51-130, a state trust company may deposit trust funds with itself or an affiliate.~~

~~(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation (FDIC), a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.~~

~~23-51-105. Articles of association of state trust company.~~

~~The articles of association of a state trust company must be signed and acknowledged by each organizer and must contain:~~

- ~~(1) The name of the state trust company;~~
- ~~(2) The period of its duration, which may be perpetual;~~
- ~~(3) The powers of the state trust company, which may be stated~~

~~as:~~

~~(A) All powers granted to a state trust company in this state; or~~

~~(B) A list of the specific powers that the state trust~~

~~company chooses and is authorized to exercise;~~

~~(4) The aggregate number of shares that the state trust company will be authorized to issue, the number of classes of shares, which may be one or more, the number of shares of each class if more than one class, and a statement of the par value of the shares of each class or that the shares are to be without par value;~~

~~(5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class;~~

~~(6) Any provision granting to shareholders the preemptive right to acquire additional shares of the state trust company;~~

~~(7) Any provision granting the right of shareholders to cumulative voting in the election of directors;~~

~~(8) The aggregate amount of consideration to be received for all shares initially issued by the state trust company, and a statement signed and verified by the organizers that the capital stock has been fully subscribed and the purchase price therefor has been paid into an escrow account approved by the Bank Commissioner;~~

~~(9) Any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this chapter to be set forth in the articles of association;~~

~~(10) The street address of the state trust company's principal office required to be maintained under § 23-51-172; and~~

~~(11) The number of directors or managers constituting the initial board, which may not be fewer than three (3), and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified.~~

~~23-51-106. Application for state trust company charter.~~

~~(a) An application for a state trust company charter must be made under oath and in the form required by the Bank Commissioner and must be supported by information, data, records, and opinions of counsel that the commissioner requires. The application must be accompanied by a non-refundable filing fee of not less than three thousand dollars (\$3,000) nor~~

~~more than ten thousand dollars (\$10,000) as set by rule of the commissioner and proof of escrow of deposit for the required capital.~~

~~(b) The commissioner shall grant a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the commissioner shall examine the business plan which shall be submitted as part of the application for a state trust company charter and consider:~~

~~(1) The market or markets to be served;~~

~~(2) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;~~

~~(3) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;~~

~~(4) Whether the proposed officers and directors, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;~~

~~(5) Whether each principal shareholder has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and~~

~~(6) Whether the organizers are acting in good faith.~~

~~(c) The failure of an applicant to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.~~

~~23-51-107. Notice and investigation of charter application.~~

~~(a) The Bank Commissioner shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Upon filing of an application with the commissioner, the organizers of the proposed state trust company shall give notice of filing through publication by one (1) insertion in a newspaper published in~~

~~the City of Little Rock and having a general and substantially statewide circulation and shall give written notice of filing through the United States mail to all trust institutions maintaining a principal office or a trust office in the county wherein the principal office of the proposed state trust company is to be located.~~

~~(b) At the expense of the organizers, the commissioner shall investigate the application and inquire into the identity and character of each proposed director, officer, and principal shareholder. The commissioner shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report as provided by the Freedom of Information Act of 1967, § 25-19-101 et seq. Rules adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the State Bank Department under this section. Except as provided in rules regarding confidential information, the financial statement of a proposed officer, director, or principal shareholder is confidential and not subject to public disclosure.~~

~~23-51-108. Hearing and decision on charter application.~~

~~(a) No person shall appear in opposition to the application unless the person shall have filed a written protest to the granting of the application within thirty (30) days of the date of the notice of the filing of the application. The protest must state the grounds for objection and must be accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for each protestant, such amount to be set by rule promulgated by the Bank Commissioner.~~

~~(b) Once the written report of investigation has been completed, the commissioner shall establish a time for hearing on the charter application.~~

~~(c) Notice of the time, place, and purpose of the hearing shall be given at least thirty (30) days before the hearing as follows:~~

~~(1) By letter from the commissioner to the organizers of the proposed state trust company and to each trust institution to which the organizers of the application are required to give written notice pursuant to § 23-51-107(a);~~

~~(2) By letter from the commissioner to each person who has notified the commissioner of an intention to oppose the application, provided~~

~~that if a group of persons has protested the application, the notice may be given to one (1) member of the group; and~~

~~(3) By release to news media.~~

~~(d) If the commissioner sets a hearing, the commissioner shall conduct a public hearing and as many prehearing conferences and opportunities for discovery as the commissioner considers advisable and consistent with applicable law and rules.~~

~~(e) Based on the record of any hearing conducted pursuant to subsection (d) of this section, the commissioner shall determine whether all of the necessary conditions set forth in § 23-51-106(b) have been established and shall enter an order granting or denying the charter. The commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.~~

~~23-51-109. Issuance of charter.~~

~~(a) A state trust company may not engage in the trust business until it receives its charter from the Bank Commissioner. The commissioner may not deliver the charter until the state trust company has:~~

~~(1) Elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the commissioner; and~~

~~(2) Complied with all other requirements of this chapter relative to the organization of a state trust company.~~

~~(b) If a state trust company does not open and engage in the trust business within six (6) months after the date it receives its charter or conditional approval of application for charter, or within such further period as such period may be extended, the commissioner shall revoke the charter or cancel the conditional approval of application for charter without judicial action.~~

~~23-51-110. Required capital.~~

~~(a) The Bank Commissioner may not issue a charter to a state trust company having required capital of less than one million dollars (\$1,000,000), except as provided in subsection (b) of this section.~~

~~(b) The commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion~~

~~consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company. The safety and soundness factors to be considered by the commissioner in the exercise of such discretion include but are not limited to,~~

- ~~(1) The nature and type of business conducted;~~
- ~~(2) The nature and degree of liquidity in assets held in a corporate capacity;~~
- ~~(3) The amount of fiduciary assets under management;~~
- ~~(4) The type of fiduciary assets held and the depository of the assets;~~
- ~~(5) The complexity of fiduciary duties and degree of discretion undertaken;~~
- ~~(6) The competence and experience of management;~~
- ~~(7) The extent and adequacy of internal controls;~~
- ~~(8) The presence or absence of annual unqualified audits by an independent certified public accountant;~~
- ~~(9) The reasonableness of business plans for retaining or acquiring additional capital; and~~
- ~~(10) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, beneficiaries and grantors.~~

~~(c) The proposed effective date of an order requiring an existing state trust company to increase its capital must be stated in the order as no sooner than twenty (20) days after the date the proposed order is mailed or delivered. Unless the state trust company requests a hearing before the commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.~~

~~(d) Subject to subsection (b) of this section and § 23-51-118, a state trust company to which the commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this~~

~~section, plus any additional amount or less any reduction the commissioner directs under subsection (b) of this section.~~

~~23-51-111. Application of laws relating to general business corporations.~~

~~(a) The Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., applies to a trust company to the extent not inconsistent with this chapter or the proper business of a trust company, except that any reference to the Secretary of State means the Bank Commissioner unless the context requires otherwise.~~

~~(b) Unless expressly authorized by this chapter or a rule of the commissioner, a trust company may not take an action authorized by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., would require a filing with the Secretary of State if the trust company were a business corporation, without first submitting the filing to the commissioner for the same purposes for which it otherwise would be required to be submitted to the Secretary of State and compliance with the applicable provisions of this chapter.~~

~~(c) The commissioner may adopt rules to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., applicable to an action taken under this chapter.~~

~~23-51-112. Commissioner hearings—Appeals.~~

~~(a) This section does not grant a right to a hearing to a person that is not otherwise granted by governing law. A hearing before the Bank Commissioner that is required or authorized by law may be conducted by a hearing officer on behalf of the commissioner. A matter made confidential by law must be considered by the commissioner in a closed hearing.~~

~~(b) The commissioner may convene a hearing to receive evidence and argument regarding any matter before the commissioner for decision or review under this chapter.~~

~~(c) No person shall appear in opposition to the application unless the~~

~~person shall have filed a written protest pursuant to § 23-51-108 and paid the applicable fee.~~

~~(d) At the hearing all organizers of the proposed state trust company and any person making a timely written protest against the application may appear. The attorneys for any such person may appear and be heard.~~

~~(e) The commissioner may subpoena witnesses on his or her own motion or on the request of any party to the proceedings.~~

~~(f) The admission of evidence at the hearing shall be controlled by § 25-15-213. The parties shall have the right to cross-examine witnesses. Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the commissioner's specialized knowledge. The parties may bind themselves by stipulation.~~

~~(g) The organizers shall be responsible for procuring and paying for a verbatim record of the proceeding. It will be the duty of the organizers to furnish at least one (1) copy of the transcript to the commissioner free of charge.~~

~~(h) The commissioner shall render his or her decision in writing, at or after a hearing, which decision shall include the commissioner's findings of fact and conclusions of law.~~

~~(i)(1) The time for filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall run from the date the final decision of the commissioner is mailed or delivered, in written form, to the parties desiring to appeal.~~

~~(2) The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.~~

~~23-51-113. Trust companies chartered under prior law.~~

~~The charter of a corporation which was previously a trust company incorporated under any laws of this state prior to the adoption of the Arkansas Banking Code of 1997 may be converted to a state trust company under this chapter, if the charter, or evidence satisfactory to the Bank Commissioner that the corporation is still in existence and in good standing, is presented to the State Bank Department within six (6) months of enactment of this chapter for substitution of a charter issued under this chapter.~~

~~23-51-114. Amendment of state trust company articles of association.~~

~~(a) A state trust company that has been granted a charter under § 23-51-109 or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares in one or more classes or series.~~

~~(b) An amendment authorizing the issuance of shares in series must contain:~~

~~(1) The designation of each series and of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and~~

~~(2) A statement of any authority to be vested in the board to establish series and determine the preferences, limitations, and relative rights of each series.~~

~~(c) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders must be made or obtained in accordance with provisions of the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., for the amendment or restatement of articles of incorporation except as otherwise provided by this chapter or rules adopted under this chapter. The original and one (1) copy of the articles of amendment or restated articles of association must be filed with the Bank Commissioner for approval. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the amendment or restatement within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement or articles of association under this section.~~

~~(d) If the commissioner finds that the amendment or restatement conforms to law and any conditions imposed by the commissioner, and any required filing fee has been paid, the commissioner shall:~~

~~(1) Endorse the face of the original and copy with the date of approval and the word "Approved";~~

~~(2) File the original in the State Bank Department's records;~~  
and

~~(3) Deliver a certified copy to the amendment or restatement to the state trust company.~~

~~(e) An amendment or restatement, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.~~

~~23-51-115. Establishing a series of shares.~~

~~(a) If the articles of association expressly give the board authority to establish series and determine the preferences, limitations, and relative rights of each series of shares, the board may do so only on compliance with this section and any rules adopted under this chapter.~~

~~(b) A series of shares may be established in the manner provided by the provisions of the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., as if the state trust company were a domestic corporation, but the shares of the series may not be issued and sold except upon compliance with this section. The state trust company shall file the original and one copy of the articles of amendment required by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., with the Bank Commissioner. Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the series within thirty (30) days after the date the commissioner considers the submission informationally complete and accepted for filing. The commissioner may require the submission of additional information as considered necessary to an informed decision.~~

~~(c) If the commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series otherwise conforms to law and any conditions imposed by the commissioner, and that any required filing fee has been paid, the commissioner shall:~~

~~(1) Endorse the face of the original and copy of the statement with the date of approval and the word "Approved";~~

~~(2) File the original in the State Bank Department's records;~~  
and

~~(3) Deliver a certified copy of the statement to the state trust company.~~

~~23-51-116. Change in outstanding capital and surplus.~~

~~(a) A state trust company may not reduce or increase its outstanding capital through dividend, redemption, issuance of shares or otherwise,~~

~~without the prior approval of the Bank Commissioner, except as permitted by this section or rules adopted under this chapter.~~

~~(b) Unless otherwise restricted by rules, prior approval is not required for an increase in capital accomplished through:~~

~~(1) Issuance of shares of common stock for cash;~~

~~(2) Declaration and payment of pro rata share dividends as defined in the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq.;~~  
~~or~~

~~(3) Adoption by the board of a resolution directing that all or part of undivided profits be transferred to capital.~~

~~(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.~~

~~23-51-117. Capital notes or debentures.~~

~~(a) With the prior written approval of the Bank Commissioner, any state trust company may, at any time, through action of its board, and without requiring action of its shareholders, issue and sell its capital notes or debentures, which must be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.~~

~~(b) Capital notes or debentures may be convertible into shares of any class or series. The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.~~

~~(c) Without the prior written approval of the commissioner, interest due or principal repayable on outstanding capital notes or debentures may not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.~~

~~(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes as may be provided by rules adopted under this chapter.~~

~~23-51-118. Private trust company.~~

~~(a) A private trust company engaging in the trust business in this state shall comply with each and every provision of this chapter applicable to a trust company unless expressly exempted therefrom in writing by the Bank Commissioner pursuant to this section or by rule adopted by the commissioner.~~

~~(b) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of §§ 23-51-105(11), 23-51-106(b), 23-51-107, 23-51-110(a), 23-51-122, 23-51-126(b), (c), and (d), 23-51-127, and 23-51-128. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:~~

~~(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one or more family members;~~

~~(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one (1) or more trusts or charitable organizations established by the individual or individuals; and~~

~~(3) All individuals who control a private trust company or establish trusts or charitable organizations controlling the private trust company must be related within the second degree of affinity or consanguinity.~~

~~(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing. The commissioner may require the submission of additional information as~~

~~considered necessary to an informed decision.~~

~~(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.~~

~~(e) The commissioner may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this chapter that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.~~

~~23-51-119. Requirements for a private trust company.~~

~~(a) Application.~~

~~(1) A private trust company requesting an exemption from the provisions of this chapter pursuant to § 23-51-118 shall file an application with the Bank Commissioner containing the following:~~

~~(A) A non-refundable application fee on an amount not less than three thousand dollars (\$3,000) nor more than five thousand dollars (\$5,000), as set by rules issued by the commissioner;~~

~~(B) A detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;~~

~~(C) A statement under oath of the reason for requesting the exemption;~~

~~(D) A statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the commissioner;~~

~~(E) The current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a United States Postal Service post office box or a private mail box, postal box, or mail drop; and~~

~~(F) Listing of the specific provisions of the chapter for which the request for exemption is made.~~

~~(2) The commissioner shall not approve a private trust company~~

~~exemption unless the application is completed as required in subdivision (a)(1) of this section.~~

~~(b) Requirements. To maintain status as an exempt private trust company under this chapter, the private trust company shall comply with the following:~~

~~(1) An exempt private trust company shall not transact business with the public;~~

~~(2) An exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the commissioner and be accompanied by a fee set by regulations issued by the commissioner. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the State Bank Department. The department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The commissioner may examine or investigate the private state trust company periodically as necessary to verify the certification;~~

~~(3) An exempt private trust company shall comply with the principal office provisions of § 23-51-172 and with the address and telephone requirements of subdivision (a)(1)(E) of this section;~~

~~(4) The exempt private trust company shall pay all applicable corporate franchise taxes.~~

~~(c) Change of Control. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this chapter and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.~~

~~(d) Authority to Revoke. The commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:~~

~~(1) The exempt private trust company makes a false statement~~

~~under oath on any document required to be filed by the chapter or by any regulation promulgated by the commissioner;~~

~~(2) The exempt private trust company fails to submit to an examination as required by § 23-51-184;~~

~~(3) The exempt private trust company withholds requested information from the commissioner; or~~

~~(4) The exempt private trust company violates any provision of this section applicable to exempt private trust companies.~~

~~(e) Notification of Revocation of Exemption. If the commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification must state grounds for the revocation with reasonable certainty. The notice must state its effective date, which may not be sooner than five (5) calendar days after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the chapter applicable to non-exempt state trust companies.~~

~~(f) Compliance Period. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this chapter from which it was formerly exempt. If, however, the commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the commissioner may shorten or eliminate, in the commissioner's sole discretion, the five (5) calendar days compliance period.~~

~~(g) Remedies for Failure to Comply. If the private trust company does not comply with all of the provisions of this chapter, including such capitalization requirements as have been determined by the commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the commissioner may:~~

~~(1) Institute any action or remedy prescribed by this chapter, or any applicable rule; or~~

~~(2) Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.~~

~~23-51-120. Conversion to public trust company.~~

~~(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Bank Commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company pursuant to § 23-51-118 shall cease to apply on the effective date of the notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the commissioner.~~

~~(b) The notificant may commence transacting business with the general public thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.~~

~~(c) The thirty-day period of review may be extended by the commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the commissioner.~~

~~(d) The commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business of the general public would be contrary to the public interest or if the commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this chapter from which the notificant had been previously exempted pursuant to § 23-51-118.~~

~~23-51-121. Investment in state trust company facilities—Definition.~~

~~(a) In this chapter, "state trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:~~

~~(1) Providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;~~

~~(2) Conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention and storage;~~

~~(3) Holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or~~

~~(4) Conducting another activity authorized by rules adopted under this chapter.~~

~~(b) Without the prior written approval of the Bank Commissioner, a state trust company may not directly or indirectly invest an amount in excess of its capital and surplus in state trust company facilities, furniture, fixtures, and equipment. Except as otherwise provided by rules adopted under this chapter, in computing this limitation a state trust company:~~

~~(1) Shall include:~~

~~(A) Its direct investment in state trust company facilities;~~

~~(B) Any investment in equity or investment securities of a company holding title to a facility used by the state trust company for the purposes specified by subsection (a) of this section;~~

~~(C) Any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and~~

~~(D) Any indebtedness incurred on state trust company facilities by a company:~~

~~(i) That holds title to the facility;~~

~~(ii) That is an affiliate of the state trust company;~~

and

~~(iii) In which the state trust company is invested in the manner described by subdivision (b)(1)(B) or subdivision (b)(1)(C) of~~

~~this section; and~~

~~(2) May exclude an amount included under subdivisions (b)(1)(B)-(D) of this section to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.~~

~~(c) Real estate acquired under subdivision (a)(3) of this section and not improved and occupied by the state trust company ceases to be a state trust company facility on the third anniversary of the date of its acquisition, unless the commissioner on application grants written approval to further delay in the improvement and occupation of the property by the state trust company.~~

~~(d) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.~~

~~23-51-122. Other real estate.~~

~~(a) A state trust company may not acquire real estate except:~~

~~(1) As permitted by § 23-51-121 or as otherwise provided by this chapter, including rules adopted under this chapter;~~

~~(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or~~

~~(3) With the prior written approval of the Bank Commissioner.~~

~~(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.~~

~~(c) A state trust company shall dispose of any real estate subject to subdivisions (a)(1) and (2) of this section not later than:~~

~~(1) The fifth anniversary of the date:~~

~~(A) It was acquired, except as otherwise provided by rules adopted under this chapter; or~~

~~(B) It ceases to be used as a state trust company facility; or~~

~~(2) The third anniversary of the date it ceases to be a state trust company facility as provided by § 23-51-121(e).~~

~~(d) The commissioner on application may grant one (1) or more extensions of time for disposing of real estate if the commissioner determines that:~~

~~(1) The state trust company has made a good faith effort to dispose of the real estate; or~~

~~(2) Disposal of the real estate would be detrimental to the state trust company.~~

~~23-51-123. Securities.~~

~~(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.~~

~~(b) Unless the Bank Commissioner approves maintenance of a lesser amount in writing, a state trust company must invest and maintain an amount equal to not less than forty percent (40%) of the state trust company's capital under § 23-51-110 in unencumbered cash, cash equivalents, and readily marketable securities.~~

~~(c) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. The commissioner may authorize investments in excess of this limitation on written application if the commissioner concludes that:~~

~~(1) The excess investment is not prohibited by other applicable law; and~~

~~(2) The safety and soundness of the requesting state trust company is not adversely affected.~~

~~(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:~~

~~(1) Direct obligations of the United States Government;~~

~~(2) Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United~~

~~States Government;~~

~~(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such a guarantee;~~

~~(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments or agreements;~~

~~(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions thereof;~~

~~(6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;~~

~~(7) Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one (1) year;~~

~~(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;~~

~~(9) The sale of federal funds with a maturity of not more than one (1) business day;~~

~~(10) Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;~~

~~(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that any such repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian;~~

~~(12) Securities of, or other interest in, any open end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17~~

~~G.F.R. § 270.2a-7, provided that the portfolio of such investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.~~

~~(c) The commissioner may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.~~

~~23-51-124. Transactions in state trust company shares.~~

~~(a) A state trust company may acquire its own shares if:~~

~~(1) The amount of its undivided profits is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; and~~

~~(2) The state trust company obtains the prior written approval of the Bank Commissioner.~~

~~(b) A state trust company shall not make loans upon the security of its own shares.~~

~~23-51-125. Subsidiaries.~~

~~(a) Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.~~

~~(b) A state trust company may not invest more than an amount equal to twenty percent (20%) of its capital base in a single subsidiary and may not invest an amount in excess of forty percent (40%) of its capital base in all subsidiaries. The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary. The Bank Commissioner may authorize investments in excess of these limitations on written application if the commissioner concludes that:~~

~~(1) The excess investment is not prohibited by other applicable law; and~~

~~(2) The safety and soundness of the requesting state trust company is not adversely affected.~~

~~(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the commissioner describing in detail the proposed activities of the subsidiary.~~

~~(d) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary thirty (30) days after the date the commissioner receives the state trust company's letter, unless the commissioner specifies another date. The commissioner may extend the thirty-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the commissioner.~~

~~(e) A subsidiary of a state trust company is subject to rule by the commissioner to the extent provided by this chapter or rules adopted under this chapter. In the absence of limiting rules, the commissioner may regulate a subsidiary as if it were a state trust company.~~

~~23-51-126. Mutual funds.~~

~~(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-1 et seq., and the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.~~

~~(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under § 23-51-123(d), the state trust company may invest in the investment company without limitation.~~

~~(c) If the portfolio of an investment company described in subsection (a) of this section contains any investment that is subject to the limits of § 23-51-123(e), the state trust company may invest in the investment company~~

~~not more than an amount equal to twenty percent (20%) of the state trust company's capital base. This provision does not apply to a money market fund.~~

~~(d) In evaluating investment limits under this chapter, a state trust company may not be required to combine:~~

~~(1) The state trust company's pro rata share of the securities of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or~~

~~(2) The state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.~~

~~23-51-127. Engaging in commerce prohibited.~~

~~Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfil a fiduciary obligation to a client.~~

~~23-51-128. Lending limits.~~

~~(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.~~

~~(b) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company may not exceed an amount equal to twenty percent (20%) of the state trust company's capital base. All covered transactions between an insider and a state trust company must be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a non-insider.~~

~~(c) The Bank Commissioner may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit, and establish collective lending and investment limits.~~

~~(d) The commissioner may determine whether a loan or extension of credit putatively made to a person will be attributed to another person for purposes of this section.~~

~~(e) A state trust company may not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.~~

~~(f) An officer, director, or employee of a state trust company who approves or participates in the approval of a loan with actual knowledge that the loan violates this section is jointly and severally liable to the state trust company for the lesser of the amount by which the loan exceeded applicable lending limits or the state trust company's actual loss and remains liable for that amount until the loan and all prior indebtedness of the borrower to the state trust company have been fully repaid. The state trust company may initiate a proceeding to collect an amount due under this subsection at any time before the date the borrower defaults on the subject loan or any prior indebtedness or before the fourth anniversary of that date. A person that is liable for and pays amounts to the state trust company under this subsection is entitled to an assignment of the state trust company's claim against the borrower to the extent of the payments. For purposes of this subsection, an officer, director, or employee of a state trust company is presumed to know the amount of the state trust company's lending limit under subsection (a) of this section and the amount of the borrower's aggregate outstanding indebtedness to the state trust company immediately before a new loan or extension of credit to that borrower.~~

~~23-51-129. Lease financing transactions.~~

~~(a) Subject to rules adopted under this chapter, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client. Without the written approval of the Bank Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company may not hold the property more than six (6) months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.~~

~~(b) Rental payments received by the trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money. However, a lease financing transaction is considered to be a loan or extension of credit for purposes of § 23-51-128.~~

~~23-51-130. Trust deposit.~~

~~(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary, provided:~~

~~(1) It maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or other entity approved by the Bank Commissioner, either in this state or elsewhere;~~

~~(2) The total market value of the security is at all times at least equal to the amount of the deposit;~~

~~(3) The separate fund is designated as such; and~~

~~(4) The separate fund is maintained under the control of another trust institution, bank or government agency.~~

~~(b) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained. Income from the securities in the fund belongs to the state trust company.~~

~~(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.~~

~~23-51-131. Common investment funds.~~

~~(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.~~

~~(b) The Bank Commissioner may adopt rules to administer and carry out this section, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section.~~

~~23-51-132.—Borrowing limit.~~

~~Except with the prior written approval of the Bank Commissioner, a state trust company may not have liabilities outstanding exceeding an amount equal to three times its capital base.~~

~~23-51-133.—Pledge of assets.~~

~~A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as specifically authorized or required by § 23-51-130, or by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.~~

~~23-51-134.—Acquisition of control.~~

~~(a) Except as expressly otherwise permitted, a person may not without the prior written approval of the Bank Commissioner directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.~~

~~(b) This chapter does not prohibit a person from negotiating to acquire, but not acquiring, control of a state trust company or a person that controls a state trust company.~~

~~(c) This section does not apply to:~~

~~(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;~~

~~(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this chapter or who was identified as a controlling person in a prior application filed with and approved by the commissioner;~~

~~(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;~~

~~(4) A transaction exempted by the commissioner by rule or order because the transaction is not within the purposes of this chapter or the rule of which is not necessary or appropriate to achieve the objectives of this chapter.~~

~~23-51-135. Application regarding acquisition of control.~~

~~(a) The proposed transferee seeking approval to acquire control of a state trust company or a person that controls a state trust company must file with the Bank Commissioner:~~

~~(1) An application in the form prescribed by the commissioner;~~

~~(2) The filing fee in an amount not less than one thousand five hundred dollars (\$1,500) and not more than three thousand dollars (\$3,000), as set by rules issued by the commissioner; and~~

~~(3) All information required by rule or that the commissioner requires in a particular application as necessary to an informed decision to approve or reject the proposed acquisition.~~

~~(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the commissioner may be required of each member of the group.~~

~~(c) If the proposed transferee is not an Arkansas resident, an Arkansas company, or an out-of-state company qualified to do business in this state, a written consent to service of process on a resident of this state in any action or suit arising out of or connected with the proposed acquisition.~~

~~(d) The proposed transferee must give public notice of the application, its date of filing, and the identity of each participant, in the form specified by the commissioner, through publication by one (1) insertion in a newspaper published in the City of Little Rock and having a general and substantially statewide circulation, promptly after the commissioner accepts the application as complete.~~

~~23-51-136. Hearing and decision on acquisition of control.~~

~~(a) Not later than sixty (60) days after the application is officially filed, the Bank Commissioner may approve the application or set the application for hearing. If the commissioner sets a hearing, the commissioner shall conduct a hearing as he or she considers advisable and consistent with governing statutes and rules.~~

~~(b) Based on the record, the commissioner may issue an order denying an application if:~~

~~(1) The acquisition would substantially lessen competition, be in restraint of trade, result in a monopoly, or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the trust industry in any part of this state, unless:~~

~~(A) The anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of acquisition in meeting the convenience and needs of the community to be served; and~~

~~(B) The proposed acquisition is not in violation of law of this state or the United States;~~

~~(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;~~

~~(3) Plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;~~

~~(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;~~

~~(5) The state trust company will be insolvent, in a hazardous condition, not have adequate capitalization, or not be in compliance with the laws of this state after the acquisition;~~

~~(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the commissioner; or~~

~~(7) The proposed transferee is not acting in good faith.~~

~~(c) If an application filed under this section is approved by the commissioner, the transaction may be consummated. Any written commitment from the proposed transferee offered to and accepted by the commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an~~

~~agreement under this chapter.~~

~~23-51-137.—Appeal from adverse decision.~~

~~(a)(1)—If a hearing has been held, the Bank Commissioner has entered an order denying the application, and the order has become final, the proposed transferee may appeal the final order by filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.~~

~~(2)—The time for filing such a petition for judicial review shall run from the date the final decision of the commissioner is mailed or delivered, in written form, to the parties desiring to appeal.~~

~~(3)—The hearing of such a petition for review will be advanced on the docket of each reviewing court as a matter of public interest.~~

~~(b)—The filing of an appeal under this section does not stay the order of the commissioner.~~

~~23-51-138.—Objection to other transfer.~~

~~This chapter may not be construed to prevent the Bank Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, regardless of whether the transfer is included within this chapter, if the commissioner considers the transfer to be against the public interest.~~

~~23-51-139.—Civil enforcement—Criminal penalties.~~

~~(a)—The Bank Commissioner may bring any appropriate civil action against any person who the commissioner believes has committed or is about to commit a violation of this chapter or a rule or order of the commissioner pertaining to this chapter.~~

~~(b)—A person who knowingly fails or refuses to file the application required by § 23-51-135 commits an offense. An offense under this subsection is a Class A misdemeanor.~~

~~23-51-140.—Voting securities held by state trust company.~~

~~(a)—Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in~~

~~its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:~~

~~(1) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;~~

~~(2) The terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or~~

~~(3) The securities are voted solely by a co-fiduciary that is not an affiliate of the state trust company, as if the co-fiduciary were the sole fiduciary.~~

~~(b) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote.~~

~~23-51-141.—Bylaws.~~

~~Each state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Arkansas Business Corporation Act, § 4-27-101 et seq.~~

~~23-51-142.—Board of directors.~~

~~(a) The board of a state trust company shall be governed by the provisions of the Arkansas Business Corporation Act, § 4-27-101 et seq., provided that the board must consist of not fewer than three directors, the majority of whom must be residents of this state.~~

~~(b) Unless the Bank Commissioner consents otherwise in writing, a person may not serve as director of a state trust company if:~~

~~(1) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;~~

~~(2) The person has been convicted of a felony; or~~

~~(3) The person has violated a provision of this chapter, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.~~

~~(c) If a state trust company does not elect directors prior to sixty (60) days after the date of its regular annual meeting, the commissioner may commence a proceeding to appoint a receiver pursuant to § 23-51-164 to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors, the commissioner may close the state trust company for liquidation.~~

~~(d) A vacancy on the board that reduces the number of directors to fewer than three must be filled not later than ninety (90) days after the date the vacancy occurs. If the vacancy has not been filled upon the expiration of ninety (90) days following the date the vacancy occurs, the commissioner may commence a proceeding to appoint a receiver pursuant to § 23-51-164 to operate the state trust company and elect a board of not fewer than three persons to resolve the vacancy. If the conservator is unable to locate or elect three persons willing and able to serve as directors, the commissioner may close the state trust company for liquidation.~~

~~(e) Before each term to which a person is elected to serve as a director of a state trust company, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:~~

~~(1) Accepts the position and is not disqualified from serving in the position;~~

~~(2) Will not violate or knowingly permit an officer, director, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and~~

~~(3) Will diligently perform the duties of the position.~~

~~(f) An advisory director is not considered a director if the advisory director:~~

~~(1) Is not elected by the shareholders of the state trust company;~~

~~(2) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and~~

~~(3) Provides solely general policy advice to the board.~~

~~23-51-143. Officers.~~

~~The board shall annually elect the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. The board may appoint other officers of the state trust company as the board considers necessary. The duties of any two or more officers may be combined by the board and held by one person.~~

~~23-51-144. Certain criminal offenses.~~

~~(a) An officer, director, employee or shareholder of a state trust company commits an offense if the person knowingly:~~

~~(1) Conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the Bank Commissioner or an agent of the commissioner; or~~

~~(2) For the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.~~

~~(b) An officer, director or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.~~

~~(c) An offense under this section is a Class D felony.~~

~~23-51-145. Transactions with management and affiliates.~~

~~(a) Without the prior approval of a disinterested majority of the board recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of a majority of the disinterested directors and the Bank Commissioner, a state trust company may not directly or indirectly:~~

~~(1) Sell or lease an asset of the state trust company to an officer, director, or principal shareholder of the state trust company or an~~

~~affiliate of the state trust company;~~

~~(2) Purchase or lease an asset in which an officer, director or principal shareholder of the state trust company or an affiliate of the state trust company has an interest; or~~

~~(3) Subject to § 23-51-128, extend credit to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company.~~

~~(b) Notwithstanding subsection (a) of this section, a lease transaction described in subdivision (a)(2) of this section involving real property may not be consummated, renewed, or extended without the prior written approval of the commissioner. For purposes of this subsection only, an affiliate of the state trust company does not include a subsidiary of the state trust company.~~

~~(c) Subject to § 23-51-128, a state trust company may not directly or indirectly extend credit to an employee, officer, director or principal shareholder of the state trust company or an affiliate of the state trust company, unless the extension of credit:~~

~~(1) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders, or affiliates of the state trust company;~~

~~(2) Does not involve more than the normal risk of repayment or present other unfavorable features; and~~

~~(3) The state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders or affiliates of the state trust company.~~

~~(d) An officer or director of the state trust company who knowingly participates in or knowingly permits a violation of this section shall be guilty of a Class D felony.~~

~~(e) The commissioner may adopt rules to administer and carry out this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.~~

~~23-51-146.—Fiduciary responsibility.~~

~~The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:~~

- ~~(1) The determination of policies;~~
- ~~(2) The investment and disposition of property held in a fiduciary capacity; and~~
- ~~(3) The direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.~~

~~23-51-147.—Recordkeeping.~~

~~A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company. The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.~~

~~23-51-148.—Bonding requirements.~~

~~(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by rules adopted under this chapter, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies:~~

- ~~(1) Authorized to do business in this state; or~~
- ~~(2) Acceptable to the Bank Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.~~

~~(b) Except as otherwise provided by rule, coverage required under subsection (a) of this section must include each director, officer, and employee of the state trust company without regard to whether the person receives salary or other compensation.~~

~~(c) A state trust company may apply to the commissioner for permission to eliminate the bonding requirement of this section for a particular individual. The commissioner shall approve the application if the commissioner finds that the bonding requirement is unnecessary or burdensome. Unless the application presents novel or unusual questions, the commissioner~~

~~shall approve the application or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing.~~

~~23-51-149. Reports of apparent crime.~~

~~A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars (\$5,000), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, officer, or employee shall report the robbery, shortages or apparent or suspected misapplication to the Bank Commissioner within forty eight (48) hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report.~~

~~23-51-150. Merger authority.~~

~~(a) With the prior written approval of the Bank Commissioner, a state trust company may merge or consolidate with a state bank to the same extent as a state bank under the Arkansas Banking Code of 1997 or with another person to the same extent as a business corporation under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., subject to this chapter.~~

~~(b) Implementation of a plan of merger by a trust company and a state bank, approval of the board, and shareholders of the parties must be made or obtained as provided by the Arkansas Banking Code of 1997 as if the state trust company were a state bank, except as otherwise provided by rules adopted under this chapter.~~

~~(c) Implementation of the plan of merger with a person other than a state bank, approval of the board and shareholders of the parties must be made or obtained as provided by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., as if the state trust company were a domestic corporation and all other parties to the merger were foreign corporations and other entities, except as otherwise provided by rules adopted under this chapter.~~

~~23-51-151. Merger application.~~

~~(a) The original articles of merger, a number of copies of the articles of merger equal to the number of surviving, new, and acquiring entities, and an application in the form required by the Bank Commissioner must be filed with the commissioner. The commissioner shall investigate the condition of the merging parties. The commissioner may require the submission of additional information as considered necessary to an informed decision.~~

~~(b) The commissioner may approve the merger if:~~

~~(1) Each resulting state trust company will be solvent and have adequate capitalization for its business and location;~~

~~(2) Each resulting state trust company has in all respects complied with the statutes and rules relative to the organization of a state trust company;~~

~~(3) All fiduciary obligations and liabilities of each state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;~~

~~(4) Each surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and~~

~~(5) All conditions imposed by the commissioner have been satisfied or otherwise resolved.~~

~~23-51-152. Approval of commissioner.~~

~~(a) If the Bank Commissioner approves the merger and finds that all required filing fees and investigative costs have been paid, the commissioner shall:~~

~~(1) Endorse the face of the original and each copy with the date of approval and the word "Approved";~~

~~(2) File the original in the State Bank Department's records;~~  
and

~~(3) Deliver a certified copy of the articles of merger to each surviving, new, or acquiring entity.~~

~~(b) A merger is effective on the date of approval, unless the merger agreement provides and the commissioner consents to a different effective date.~~

~~23-51-153. Rights of dissenters to mergers.~~

~~A shareholder may dissent from the merger to the extent and by following the procedure provided by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., or rules adopted under this chapter.~~

~~23-51-154. Authority to purchase assets of another trust institution.~~

~~(a) Subject to the provisions of this section, a state trust company may purchase assets of another state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this chapter or any other applicable statutes, the purchase of all or part of the assets of the trust institution does not make the purchasing state trust company responsible for any liability or obligation of the selling trust institution that is not expressly assumed by the purchasing state trust company. Except as otherwise provided by this chapter, this chapter does not govern or prohibit the purchase by a trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.~~

~~(b) An application in the form required by the Bank Commissioner must be filed with the commissioner for any acquisition of all or substantially all of (i) the assets of a state trust company or (ii) the trust assets of another trust institution by a state trust company. The commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The commissioner shall approve the purchase if:~~

~~(1) The acquiring state trust company will be solvent, not in a hazardous condition and have sufficient capitalization for its business and location;~~

~~(2) The acquiring state trust company has complied with all applicable statutes and rules, including without limitation any applicable requirements of §§ 23-51-178 and 23-51-179;~~

~~(3) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring state trust company;~~

~~(4) All conditions imposed by the commissioner have been satisfied or otherwise resolved; and~~

~~(5) All fees and costs have been paid.~~

~~(c) A purchase requiring an application pursuant to subsection (b) of this section is effective on the date of approval, unless the purchase agreement provides for, and the commissioner consents to, a different effective date.~~

~~(d) The acquiring state trust company shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.~~

~~23-51-155. Sale of assets.~~

~~(a) The board of a state trust company, with the Bank Commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder approval if the commissioner finds:~~

~~(1) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company;~~

~~(2) The sale is in the best interest of the state trust company's clients and creditors; and~~

~~(3) The Federal Deposit Insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.~~

~~(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:~~

~~(1) All of the state trust company's liabilities to clients and depositors;~~

~~(2) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;~~

~~(3) Obligations incurred by the commissioner arising out of the supervision or sale of the state trust company; and~~

~~(4) Fees and assessments due the State Bank Department.~~

~~(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.~~

~~(d) This section does not affect the commissioner's right to take action under any other law. The sale by a trust company of all or substantially all of its assets with shareholder approval is deemed a~~

~~voluntary dissolution and liquidation and shall be governed by § 23-49-119.~~

~~23-51-156.—Required vote of shareholders.~~

~~A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders owning a majority of its voting stock.~~

~~23-51-157.—Corporate procedure.~~

~~Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders duly called by resolution of the board of directors, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder, or in case of a shareholder's death, to the shareholder's legal representative, addressed to the shareholder's last known residence not less than ten (10) days prior to the date of the meeting. If stockholders shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such an action shall have been taken, attested by an officer of the trust company, shall be transmitted to the Bank Commissioner for approval.~~

~~23-51-158.—Authority to liquidate—Publication.~~

~~If the Bank Commissioner shall approve the liquidation, the commissioner shall issue to the state trust company under the commissioner's seal, a permit for that purpose. No such permit shall be issued by the commissioner until the commissioner shall be satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the commissioner shall refuse to issue a permit, and shall be authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this chapter. When the commissioner shall approve the voluntary liquidation of a state trust company, the directors of said state trust company shall cause to be published in a newspaper with a substantially statewide circulation published in the City of Little Rock a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. The notice shall be published once a week for four consecutive weeks.~~

~~23-51-159.— Examination and reports.~~

~~When any state trust company shall be in process of voluntary liquidation, it shall be subject to examination by the Bank Commissioner, and shall furnish such reports from time to time as may be called for by the commissioner.~~

~~23-51-160.— Unclaimed property.~~

~~All unclaimed property remaining in the hands of a liquidated state trust company shall be subject to the provisions of the Uniform Disposition of Unclaimed Property Act, § 18-28-201 et seq.~~

~~23-51-161.— Sale or transfer of property.~~

~~Upon the approval of the Bank Commissioner, any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the commissioner and by a majority vote of its board of directors. A certified copy of the minutes of any meeting at which such an action is taken, attested by an officer of the trust company, together with a copy of the contract of sale and transfer, shall be filed with the commissioner. Whenever voluntary liquidation shall be approved by the commissioner or the sale and transfer of the assets of any state trust company shall be approved by the commissioner, the charter of the state trust company shall be canceled, subject, however, to its continued existence, as provided by this chapter and the general law relative to corporations.~~

~~23-51-162.— When commissioner may take charge.~~

~~The Bank Commissioner may forthwith take possession of the business and property of any state trust company to which this chapter is applicable whenever it shall appear that the state trust company:~~

- ~~(1) Has violated its charter or any laws applicable thereto;~~
- ~~(2) Is conducting its business in an unauthorized or unsafe manner;~~
- ~~(3) Is in an unsafe or unsound condition to transact its business;~~
- ~~(4) Has an impairment of its capital;~~

- ~~(5) Is in a hazardous condition;~~
- ~~(6) Has become otherwise insolvent;~~
- ~~(7) Has neglected or refused to comply with the terms of a duly issued lawful order of the commissioner;~~
- ~~(8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the commissioner;~~
- ~~(9) Is employing officers who have refused to be examined upon oath regarding its affairs; or~~
- ~~(10) Has made a voluntary assignment of its assets to trustees.~~

~~23-51-163. Directors may act.~~

~~Any state trust company may place its assets and business under the control of the Bank Commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the commissioner, and, upon taking possession of the state trust company, the commissioner, or duly appointed agent, shall retain possession thereof until the state trust company shall be authorized by the commissioner to resume business or until the affairs of the state trust company shall be fully liquidated as herein provided. No state trust company shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the commissioner, as herein provided. Whenever any state trust company for any reason shall suspend operations for any length of time, the state trust company shall, immediately upon the suspension of operations, be deemed in the possession of the commissioner and subject to liquidation hereunder.~~

~~23-51-164. Application of Arkansas Banking Code of 1997.~~

~~When the Bank Commissioner, or duly appointed agent, shall take possession of any state trust company under § 23-51-162 or § 23-51-163, the commissioner or agent shall proceed with the dissolution and liquidation of the state trust company under the procedures established for the dissolution and liquidation of state banks under the Arkansas Banking Code of 1997.~~

~~23-51-165. Companies authorized to act as fiduciaries.~~

- ~~(a) A company shall not act as a fiduciary in this state except:~~
  - ~~(1) A state trust company;~~

~~(2) A state bank;~~

~~(3) An association organized under the laws of this state and authorized to act as a fiduciary under § 23-37-101 et seq.;~~

~~(4) A national bank having its principal office in this state and authorized by the United States Comptroller of the Currency to act as a fiduciary under 12 U.S.C. § 92a;~~

~~(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;~~

~~(6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;~~

~~(7) An out-of-state bank with a branch in this state established or maintained under the Arkansas Interstate Banking and Branching Act, § 23-48-901 et seq., or a trust office licensed by the Bank Commissioner under this chapter;~~

~~(8) An out-of-state trust company with a trust office licensed by the commissioner under this chapter; or~~

~~(9) A foundation.~~

~~(b) A company shall not engage in an unauthorized trust activity.~~

~~23-51-166. Activities not requiring a charter, etc.~~

~~Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter or license under this chapter or in an unauthorized trust activity by:~~

~~(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;~~

~~(2) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court or the laws of this state;~~

~~(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;~~

~~(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Real Estate License Law, § 17-42-101 et seq.;~~

~~(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the State Securities Department or the United States Securities and Exchange Commission;~~

~~(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the State Insurance Department to the extent that the activity is regulated by the State Insurance Department;~~

~~(7) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the State Insurance Department under the Arkansas Prepaid Funeral Benefits Law, § 23-40-101 et seq., or engaging in the lawful business of maintaining a perpetual care cemetery trust pursuant to § 20-17-904 or a permanent maintenance fund for perpetually maintained cemeteries under the Cemetery Act for Perpetually Maintained Cemeteries, § 20-17-1001 et seq.;~~

~~(8) Acting as trustee under a voting trust as provided by § 4-26-706 or § 4-27-730;~~

~~(9) Engaging in other activities expressly excluded from the application of this chapter by rules issued by the Bank Commissioner;~~

~~(10) Rendering services customarily performed by a public accountant or a certified public accountant in a manner authorized by the Arkansas State Board of Public Accountancy;~~

~~(11) Provided the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state pursuant to § 23-51-182(b);~~

~~(A) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;~~

~~(B) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or~~

~~(C) Accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client; or~~

~~(12) If the company is a foundation, serving as a fiduciary.~~

~~23-51-167. Trust business of state trust institution.~~

~~(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of the state or foreign country, at an office established and maintained pursuant to this chapter, at a branch or at any other authorized location other than an office or branch.~~

~~(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any rule or order of the Bank Commissioner applicable to the state trust institution. Provided, however, that the commissioner may waive any such prohibition if he or she determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of the state trust institutions.~~

~~23-51-168. Trust business of out-of-state trust institution.~~

~~An out-of-state trust institution which establishes or maintains one (1) or more offices in this state under this chapter may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.~~

~~23-51-169. Name of trust institution.~~

~~A state trust company or out-of-state trust institution may register any name with the Bank Commissioner in connection with establishing a principal office or trust office in this state pursuant to this chapter, except that the commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.~~

~~23-51-170. Trust business.~~

~~A state trust company or a state bank may:~~

- ~~(1) Perform any act as a fiduciary;~~
- ~~(2) Engage in any trust business;~~
- ~~(3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary~~

~~customs and usages, a power conferred in this chapter; and~~

~~(4) If a state trust company, exercise any other power authorized by § 23-51-104.~~

~~23-51-171. Branches and offices of state trust institutions.~~

~~(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this chapter and at a branch.~~

~~(b) Notwithstanding the foregoing subsection (a) of this section, a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted to be conducted at such an office by the laws of the host state applicable to trust institutions chartered by the host state.~~

~~23-51-172. State trust company principal office.~~

~~(a) Each state trust company must have and continuously maintain a principal office in this state.~~

~~(b) Each executive officer at the principal office is an agent of the state trust company for service of process.~~

~~(c) A state trust company may change its principal office to any location within this state by filing a written notice with the Bank Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.~~

~~(d) The change of principal office shall take effect thirty (30) days after the date the commissioner receives the notice pursuant to subsection (c) of this section, unless the commissioner establishes another date or unless prior to that day the commissioner notifies the state trust company that it must establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under § 23-51-106(b) for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.~~

~~23-51-173. Trust office.~~

~~(a) A state trust institution may establish or acquire and maintain trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Bank Commissioner setting forth the name of the state trust institution, the location of the proposed additional trust office and a general description of the surrounding area, whether the location will be owned or leased, furnish a copy of the resolution adopted by the board authorizing the additional trust office, general description of the activities to be conducted, an estimate of the cost of the trust office and pay the filing fee, if any, prescribed by the commissioner.~~

~~(b) The notificant may commence business at the additional trust office thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.~~

~~(c) The thirty-day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.~~

~~(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.~~

~~23-51-174. Out-of-state offices.~~

~~(a) A state bank, a state trust company, or a savings association chartered under the laws of this state may establish and maintain a new trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Bank Commissioner, which shall set forth the name of the trust institution, the location of the proposed office, and a general description of the surrounding area, whether the location will be owned or leased, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state~~

~~office, and pay the filing fee, if any, prescribed by the commissioner.~~

~~(b) The notificant may commence business at the additional office thirty (30) days after the date the commissioner receives the notice, unless the commissioner specifies another date.~~

~~(c) The thirty day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the commissioner.~~

~~(d) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.~~

~~23-51-175. Trust business at a branch or trust office.~~

~~An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains a trust office in this state as permitted by this chapter or a branch in this state.~~

~~23-51-176. Establishing an interstate trust office.~~

~~(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish and maintain a new trust office in this state.~~

~~(b) An out-of-state trust institution may not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary, is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-175, in the state where the out-of-state trust institution has its principal office.~~

~~23-51-177. Acquiring an interstate trust office.~~

~~(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may~~

~~acquire and maintain a trust office in this state.~~

~~(b) No out-of-state trust institution may maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where the out-of-state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-175, in the state where the out-of-state trust institution has its principal office.~~

~~23-51-178. Requirement of notice.~~

~~An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this chapter shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Bank Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of the notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the commissioner.~~

~~23-51-179. Conditions for approval.~~

~~(a) No trust office of an out-of-state trust institution may be acquired or established in this state under this chapter unless:~~

~~(1) The out-of-state trust institution shall have confirmed in writing to the Bank Commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;~~

~~(2) The notificant shall have provided satisfactory evidence to the commissioner of compliance with any applicable requirements of § 4-27-1501 et seq., and the applicable requirements of its home state regulator for acquiring or establishing and maintaining the office;~~

~~(3) The commissioner, acting within sixty (60) days after receiving notice under § 23-51-178, shall have certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to subsection (b) of this section have been satisfied.~~

~~(b) The out-of-state trust institution may commence business at the trust office sixty (60) days after the date the commissioner receives the notice unless the commissioner specifies another date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company pursuant to § 23-51-106(b) or § 23-51-110, the institution shall have satisfied such conditions and provided to the commissioner satisfactory evidence thereof.~~

~~(c) The sixty day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the commissioner.~~

~~(d) The commissioner may deny approval of the office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.~~

~~23-51-180. Additional trust offices.~~

~~An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in § 23-51-173.~~

~~23-51-181. Examinations—Periodic reports—Cooperative agreements—Assessment of fees.~~

~~(a) To the extent consistent with subsection (c) of this section, the Bank Commissioner may make such examinations of any office established and maintained in this state pursuant to this chapter by an out-of-state trust institution as the commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in~~

~~accordance with safe and sound banking practices. The provisions of the Arkansas Banking Code of 1997 shall apply to such examinations.~~

~~(b) The commissioner may require periodic reports regarding any out-of-state trust institution that has established and maintained an office in this state pursuant to this chapter. The required reports shall be provided by the trust institution or by the home state regulator. Any reporting requirements prescribed by the commissioner under this subsection shall be consistent with the reporting requirements applicable to state trust companies and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this chapter.~~

~~(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the commissioner may accept such a party's report of examination and report of investigation in lieu of conducting his or her own examination or investigation.~~

~~(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under § 19-11-232.~~

~~(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state, provided that the commissioner may at any time take such actions independently if the commissioner deems such actions to be necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state, but provided further that in the case of an out-of-state trust institution, the commissioner shall recognize the exclusive authority of the~~

~~home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.~~

~~(f) Each out of state trust institution that maintains one (1) or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between such parties and the commissioner.~~

~~23-51-182.—Enforcement.~~

~~(a)(1) Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., after notice and opportunity for hearing, the Bank Commissioner may determine:~~

~~(A) That an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner; or~~

~~(B) That a company is engaged in an unauthorized trust activity~~

~~(2) In either event, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the office or the company were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state.~~

~~(b) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any action permitted by subsection (a) of this section without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.~~

~~23-51-183.—Notice of subsequent merger, closing, etc.~~

~~Each out of state trust institution that maintains an office in this~~

~~state pursuant to this chapter, or the home state regulator of such a trust institution, shall give at least thirty (30) days prior written notice or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the Bank Commissioner of:~~

~~(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state trust institution or any bank holding company that controls the trust institution, with the result that an application would be required to be filed pursuant to the Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto;~~

~~(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or~~

~~(3) The closing or disposition of any office in this state.~~

~~23-51-184. Commissioner shall supervise and examine authorized trust institutions.~~

~~Every authorized trust institution shall be under the supervision of the Bank Commissioner. The commissioner shall execute and enforce through the State Bank Department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner is hereby empowered to promulgate such rules not inconsistent with the provisions of this chapter, as may, in his or her opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under his or her supervision taking into consideration the appropriate interest of the creditors, stockholders, and the public in their relations with the authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions and all rules and instructions that may be promulgated or issued by the commissioner.~~

~~23-51-185. Examinations—Assessments.~~

~~(a) The Bank Commissioner may examine each state trust company every twenty four (24) months or more often as he or she determines is necessary to safeguard the interests of the public and the safety and soundness of the institution.~~

~~(b) Each state chartered trust company shall pay to the State Bank Department within ten (10) days after notice from the commissioner in January and July of each year an assessment fee to defray the costs of examination and the costs of operations of the department which will be charged in accordance with an assessment fee schedule approved by the commissioner.~~

~~(c) The commissioner may accept examinations of a state trust company by a federal or other governmental agency in lieu of an examination under this section or may conduct examinations of a state trust company jointly or concurrently with a federal or other governmental agency.~~

~~23-51-186. Statements of condition and income.~~

~~Each state trust company shall periodically file with the Bank Commissioner a copy of its statement of condition and income. The commissioner shall have the power to call for these reports whenever deemed necessary, in order to obtain a full and complete knowledge of the condition of the trust company.~~

~~23-51-187. Confidential records.~~

~~(a) The following records of the State Bank Department shall be confidential and shall not be exhibited or revealed to the public except as stated in this section or in accordance with department rules:~~

~~(1) All examination reports filed with the department;~~

~~(2) All records disclosing information obtained from examinations;~~

~~(3) Investigations and reports revealing facts concerning a state trust company or the customers of the organization; and~~

~~(4) All personal financial statements submitted to the department for any purpose.~~

~~(b) Notwithstanding any provision of this section to the contrary, records deemed confidential in accordance with this section may, in the Bank Commissioner's discretion, be disclosed as follows:~~

~~(1) Under a validly issued subpoena and, in the interest of justice, the commissioner may waive the privilege created herein and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information so disclosed from public dissemination;~~

~~(2) Official orders of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that such a disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the state trust company; and~~

~~(3) To federal financial institutions' regulatory agencies and financial institutions' regulatory agencies of other states.~~

~~(c) The commissioner shall have the power to promulgate rules with regard to disclosure of confidential information.~~

~~23-51-188. Administrative orders — Penalties for violation.~~

~~(a) In addition to any other powers conferred by this chapter, the Bank Commissioner shall have the power to:~~

~~(1) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this chapter or any lawful rule issued thereunder;~~

~~(2) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;~~

~~(3) Order any company to cease engaging in an unauthorized trust activity; and~~

~~(4) Enter any order pursuant to § 23-51-182.~~

~~(b) The commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by any authorized trust institution, or subsidiary thereof, or any director, officer, or employee of an order issued under subdivision (a)(1) of this section. Provided further, the commissioner may impose a civil money penalty of not more than five hundred dollars (\$500) per day for each day that an authorized trust~~

~~institution, or subsidiary thereof, or any director, officer, or employee violates a cease and desist order issued under subdivision (a)(2) or subdivision (a)(3) of this section.~~

~~23-51-189.—Notice and opportunity for hearing.~~

~~Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., notice and opportunity for hearing shall be provided before any of the foregoing actions shall be undertaken by the Bank Commissioner. Provided, however, in cases involving extraordinary circumstances requiring immediate action, the commissioner may take such an action, but shall promptly afford a subsequent hearing upon application to rescind the action taken.~~

~~23-51-190.—Subpoena power and examination under oath.~~

~~The Bank Commissioner shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the commissioner.~~

~~23-51-191.—Removal of directors, officers, and employees.~~

~~Consistent with § 23-51-189, the Bank Commissioner shall have the right, and is hereby empowered, to require the immediate removal from office of any officer, director, or employee of any authorized trust institution who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution or who persistently violates the laws of this state or the lawful orders, instructions, and rules issued by the commissioner.~~

~~23-51-192.—Delegation and fiduciary responsibility.~~

~~(a) Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management, or administrative function if the person exercises reasonable care, judgment, and caution in:~~

~~(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;~~

~~(2) Establishing the scope and other terms of any delegation;~~  
and

~~(3) Reviewing periodically the delegate's actions in order to~~

~~monitor overall performance and compliance with the scope and other terms of the delegation.~~

~~(b) Notwithstanding any delegation permitted by subsection (a) of this section, any person acting as a trustee, except as provided in § 28-73-807, or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.~~

~~23-51-193. Affiliates.~~

~~(a) Any person acting as a trustee or in any other fiduciary capacity under § 23-51-192 may hire and compensate, as a delegate, an affiliate of the person if:~~

- ~~(1) Authorized by a trust or fiduciary instrument;~~
- ~~(2) Authorized by court order;~~
- ~~(3) Authorized in writing by each affected client; or~~
- ~~(4) The standards of § 23-51-192 are satisfied.~~

~~(b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services.~~

~~23-51-194. Fee determination.~~

~~The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this chapter shall be at arm's length and any compensation pursuant to such an arrangement shall be a reasonable amount with respect to the services rendered.~~

~~23-51-195. Disclosure of potential conflicts of interest.~~

~~Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after August 1, 1997, which company has any potential or actual conflict of interest which may reasonably be expected to have an impact on the independence or judgment of the trustee or fiduciary, shall disclose appropriate information concerning the actual or potential conflict of interest prior to entering into any written or oral trust or fiduciary agreement with the client or prospective client.~~

~~23-51-196. Interests in trust institutions prohibited.~~

~~(a) Neither the Bank Commissioner nor any employee or officer of the~~

~~State Bank Department who participates in the examination of a trust institution, or who may be called upon to make an official decision or determination affecting the operation of a trust institution, shall be an officer, director, attorney, owner, or holder of stock in any state trust company, or any company which owns or controls a state trust company, or receive, directly or indirectly, any payment or gratuity from any such organizations. A person subject to this section may not borrow money from a state trust company.~~

~~(b) A person subject to this section may:~~

~~(1) Be a depositor in any trust institution that the department regulates; and~~

~~(2) Purchase trust or fiduciary services, other than credit services, under rates and terms generally available to other customers of the trust institution.~~

~~23-51-197.—Designation of trustee.~~

~~Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of the person.~~

~~23-51-198.—Choice of law governing trusts.~~

~~Any trust institution that maintains a trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern any written agreement between the trust institution and its client or any instrument under which the trust institution acts for a client.~~

~~23-51-199.—Choice of law governing fiduciary investments.~~

~~Any trust institution that maintains a trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between the trust institution or its client and any other instrument under which the trust institution acts for a client.~~

~~23-51-200 — 23-51-211. [Repealed.]~~

CHAPTER 51

ARKANSAS TRUST INSTITUTIONS ACT OF 2025

Subchapter 1 – General Provisions

23-51-101. Title.

This chapter shall be known as and may be cited as the "Arkansas Trust Institutions Act of 2025".

23-51-102. Administration.

(a)(1) This chapter shall be administered by the Bank Commissioner, and every authorized trust institution shall be under the supervision of the commissioner.

(2) The commissioner shall execute and enforce through the State Bank Department or other agents all laws relating to authorized trust institutions.

(3) The commissioner may promulgate rules as he or she determines to be necessary or appropriate to implement this chapter.

(b) The commissioner may subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine a person under oath in connection with any subject related to a duty imposed or a power vested in the commissioner.

(c)(1)(A) The commissioner or an employee or officer of the department who participates in the examination of a trust institution, or who may be called upon to make an official decision or determination affecting the operation of a trust institution, shall not be an officer, director, attorney, owner, or holder of stock in a state trust company, or a company that owns or controls a state trust company, or receive, directly or indirectly, a payment or gratuity from a trust institution, state trust company, or company controlling a trust company.

(B) A person subject to this section shall not borrow money from a state trust company.

(2) A person subject to this section may:

(A) Be a depositor in a trust institution that the

department regulates; and

(B) Purchase trust or fiduciary services, other than credit services, under rates and terms generally available to other customers of the trust institution.

23-51-103. Definitions.

As used in this chapter:

(1) "Account" means a client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity;

(2) "Act as a fiduciary" means to:

(A) Accept or execute trusts, including to:

(i) Act as trustee under a written agreement;

(ii) Receive money or other property in the fiduciary's capacity as trustee for investment in real or personal property;

(iii) Act as trustee and perform the fiduciary duties committed or transferred to the fiduciary by order of a court of competent jurisdiction;

(iv) Act as trustee of the estate of a deceased person;

(v) Act as trustee for a minor or incapacitated person; or

(vi) Conduct trust business as defined in this section;

(B) Administer in any other fiduciary capacity real or tangible personal property; or

(C) Act pursuant to an order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

(3) "Administer" means, with respect to real or tangible personal property and as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep, or otherwise manage the property;

(4) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company;

(5) "Authorized trust institution" means a state trust company, subsidiary trust company, or trust office or representative trust office of a trust institution located in Arkansas;

(6) "Bank" means a state bank, national bank, a bank chartered by any state of the United States, or a foreign bank organized under the laws of a territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(7) "Bank supervisory agency" means:

(A) An agency of another state with primary responsibility for chartering and supervising a trust institution; and

(B) The United States Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies;

(8) "Branch" means the same as defined in § 23-48-702 with respect to a depository institution;

(9) "Capital" means:

(A) The sum of:

(i) The par value of all shares of the state trust company having a par value that have been issued;

(ii) The consideration fixed by the board in the manner provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., for all shares of the state trust company without par value that have been issued, except a part of that consideration that:

(a) Has been actually received;

(b) Is less than all of that consideration;

and

(c) The board, by resolution adopted not later than sixty (60) days after the date of issuance of those shares, has allocated to surplus with the prior approval of the Bank Commissioner; and

(iii) An amount not included in subdivisions (a)(9)(A)(i) and (ii) of this section that has been transferred to capital of the state trust company, on the payment of a share dividend or on adoption by

the board of a resolution directing that all or part of surplus be transferred to capital, minus each reduction made as permitted by law; less

(B) All amounts otherwise included in subdivisions (a)(9)(A)(i) and (ii) of this section that are attributable to the issuance of securities by the state trust company and that the commissioner determines, after notice and an opportunity for hearing, should be classified as debt rather than equity securities;

(10) "Capital base" means the sum of capital, surplus, and undivided profits, plus any additions and less any subtractions that the commissioner may by rule prescribe;

(11) "Charter" means a charter, license, or other authority issued by the commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state;

(12)(A) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, whether or not the trust institution owes a fiduciary duty to the person.

(B) "Client" includes the noncontingent beneficiaries of an account;

(13) "Company" means a bank, trust company, subsidiary trust company, corporation, limited liability company, partnership, association, business trust, foundation, or another trust;

(14) "Control" means:

(A) The ownership of or ability or power to vote, directly, acting through one (1) or more other persons, or otherwise indirectly, more than twenty-five percent (25%) of the outstanding shares of a class of voting securities of a state trust company or other company;

(B) The ability to control the election of a majority of the board of a state trust company or other company; and

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the commissioner after notice and an opportunity for hearing;

(15) "Depository institution" means a company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as stated in 12 U.S.C. § 1813, as it existed

on January 1, 2025;

(16) "Equity capital" means an amount by which the total assets of a state trust company exceed the total liabilities of the state trust company;

(17) "Equity security" means:

(A) Stock, other than adjustable rate preferred stock and money market, including auction rate, preferred stock;

(B) A certificate of interest or participation in a profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share or participation share, investment contract, voting-trust certificate, or partnership interest;

(C) A security immediately convertible at the option of the holder without payment of significant additional consideration into a security described by this subdivision (17);

(D) A security carrying a warrant or right to subscribe to or purchase a security described by this subdivision (17); and

(E) A certificate of interest or participation in, temporary or interim certificate for, or receipt for a security described by this subdivision (17) that evidences an existing or contingent equity ownership interest;

(18) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company;

(19)(A) "Foundation" means an organization that:

(i) Is organized and operated for religious, educational, or charitable purposes, as defined in 26 U.S.C. § 501(c)(3), as it existed on January 1, 2025;

(ii) Has equity capital of at least one million dollars (\$1,000,000);

(iii) Has fiduciary liability insurance coverage with policy limits of not less than two million dollars (\$2,000,000);

(iv) Adopts and maintains written fiduciary policies and procedures;

(v) Has an annual independent audit that covers

fiduciary activities and assets; and

(vi)(a) Is serving as a fiduciary for a trust or estate whose assets are less than seven hundred fifty thousand dollars (\$750,000).

(b) Subdivision (19)(A)(vi)(a) of this section does not apply if:

(1) The foundation is the sole remainder beneficiary of the trust or estate; or

(2) The remainder beneficiary is an organization that is supported by the foundation.

(B) "Foundation" does not include a private foundation as defined in 26 U.S.C. § 509(a), as it existed on January 1, 2025;

(20) "Hazardous condition" means, with respect to a trust company:

(A) A refusal by the trust company to permit examination of its books, papers, accounts, records, or affairs by the commissioner;

(B) Violation by a trust company of a condition of its chartering or an agreement entered into between the trust company and the commissioner; or

(C) A circumstance or condition in which an unreasonable risk of loss is threatened to clients or creditors of a trust company, excluding risk of loss to a client that arises as a result of the client's decisions or actions, but including a circumstance or condition in which a trust company:

(i) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even though the book or fair market value of its assets may exceed its liabilities;

(ii) Has equity capital less than the amount of capital the trust company is required to maintain under § 23-51-403, or the adequacy of its equity capital is threatened, as determined under regulatory accounting principles;

(iii) Has concentrated an excessive or unreasonable portion of its assets in a particular type or character of investment;

(iv) Violates or refuses to comply with this chapter, another statute or rule applicable to trust companies, or a final

and enforceable order of the commissioner;

(v) Is in a condition that renders the continuation of a particular business practice hazardous to its clients and creditors; or

(vi) Conducts business in an unsafe or unsound manner, which includes without limitation conducting business with:

(a) Inexperienced or inattentive management;

(b) Potentially dangerous operating practices;

(c) Infrequent or inadequate audits;

(d) Administration of assets that is notably deficient in relation to the volume and character or responsibility for asset holdings;

(e) Failure to adhere to sound administrative practices;

(f) Frequent occurrences of violations of laws, rules, or terms of the governing instruments; or

(g) Engaging in self-dealing or evidencing a notable degree of potential or actual conflicts of interest;

(21) "Insider" means:

(A) A director, officer, or principal shareholder of the trust company;

(B) A company controlled by a person described by subdivision (21)(A) of this section; or

(C) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the state trust company, whether or not the person has an official title or the officer is serving without salary or compensation;

(22) "Insolvent" means a circumstance or condition in which a state trust company:

(A) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(B) Has equity capital less than one million dollars (\$1,000,000), as determined under regulatory accounting principles;

(C) Fails to maintain deposit insurance with the Federal Deposit Insurance Corporation or its successor if the commissioner determines that deposit insurance is necessary for the safe and sound operation of the

state trust company, or fails to maintain adequate security for its deposits according to § 23-51-508;

(D) Sells or attempts to sell substantially all of its assets or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by §§ 23-51-701 – 23-51-706; or

(E) Attempts to dissolve or liquidate other than as provided by § 23-51-1001;

(23) "Investment security" means a marketable obligation evidencing indebtedness of a person in the form of a bond, note, debenture, or other debt instrument not otherwise classified as a loan or extension of credit;

(24) "License" means the authority granted by the commissioner under this chapter to establish, acquire, or maintain a trust office;

(25) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person;

(26) "New trust office" means a trust office located in a host state that:

(A) Is originally established by the trust institution as a trust office; and

(B) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any trust institution or trust office;

(27)(A) "Office" means, with respect to a trust institution, a physical location including the principal office, a trust office, or a representative trust office.

(B) "Office" does not include a branch;

(28) "Officer" means the presiding officer of a board, a principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company;

(29) "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state;

(30) "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state;

(31) "Out-of-state trust institution" means a trust institution that is not a state trust institution;

(32) "Person" means an individual, a company, or any other legal entity;

(33) "Principal office" with respect to:

(A) A state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one (1) executive officer of the state trust company maintains an office; or

(B) A trust institution other than a state trust company, means its principal place of business in the United States;

(34) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one (1) or more other persons, or otherwise indirectly, ten percent (10%) or more of the outstanding shares of any class of voting securities of a state trust company or other company;

(35) "Private trust company" means a trust company that does not engage in a trust business with the general public;

(36) "Receiver" means the commissioner, an agent of the commissioner, or any federal or other governmental agency exercising the powers and duties of a receiver under § 23-51-1003;

(37) "Representative trust office" means an office at which a trust institution has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary;

(38) "Savings association" means a depository institution that is neither a bank nor a foreign bank;

(39) "Shareholder" means an owner of a share in a state trust

company;

(40) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences;

(41) "State" means any state of the United States, the District of Columbia, any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the United States Virgin Islands, and the Northern Mariana Islands;

(42) "State bank" means a bank chartered to act as a fiduciary by this state;

(43) "State trust company" means a corporation organized or reorganized under this chapter;

(44) "State trust company facility" means real estate, including an improvement, owned, or leased to the extent the lease or the leasehold improvements are capitalized, by a state trust company for the purpose of:

(A) Providing space for state trust company employees to perform their duties and space for parking by state trust company employees and customers;

(B) Conducting trust business, including meeting the reasonable needs and convenience of the state trust company's customers, computer operations, document and other item processing, maintenance and record retention, and storage;

(C) Holding, improving, and occupying as an incident to future expansion of the state trust company's facilities; or

(D) Conducting another activity authorized by rules adopted under this chapter;

(45) "State trust institution" means a trust institution having its principal office in this state;

(46)(A) "Subsidiary" means a company that is controlled by another person.

(B) "Subsidiary" includes a subsidiary of a subsidiary;

(47) "Subsidiary trust company" means a corporation organized under the Arkansas Business Corporation Act, § 4-27-101 et seq., and authorized by the commissioner pursuant to § 23-47-801 et seq., to conduct trust business and business incidental to trust business in this state, of which more than fifty percent (50%) of the voting stock is owned, directly or

indirectly, by a bank holding company which also owns, directly or indirectly, an affiliated bank, as that term is defined in § 23-47-801 et seq.;

(48) "Surplus" means the amount by which the assets of a state trust company exceeds its liabilities, capital, and undivided profits;

(49) "Trust business" means the holding out by a person to the public by advertising, solicitation, or other means that the person is available to perform any service of a fiduciary in this or another state, including without limitation:

(A) Acting as a fiduciary; or

(B) To the extent not acting as a fiduciary, any of the following:

(i) Receiving for safekeeping personal property of every description;

(ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver, or transfer agent; or

(iii) Acting as financial advisor, investment advisor or manager, agent, or attorney-in-fact in any agreed-upon capacity;

(50) "Trust company" means a state trust company, subsidiary trust company, or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank;

(51) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client;

(52) "Trust institution" means a depository institution, state bank, or trust company;

(53) "Trust office" means a physical office, other than the principal office, at which a trust institution is licensed by the commissioner to act as a fiduciary;

(54)(A) "Unauthorized trust activity" means:

(i) A company, other than one identified in § 23-51-103, acting as a fiduciary within this state;

(ii) A company engaging in a trust business in this state at any office of the company that is not its principal office, if the company is a state trust institution, or that is not a trust office or a representative trust office of the company; or

(iii) An out-of-state trust institution engaging in a trust business in this state at any time under an order issued by the commissioner under § 23-51-301 is in effect.

(B) "Unauthorized trust activity" does not include a foundation serving as a fiduciary;

(55)(A) "Undivided profits" means the part of equity capital of a state trust company equal to the balance of its net profits, income, gains, and losses since the date of its formation, minus subsequent distributions to shareholders and transfers to surplus or capital under share dividends or appropriate board resolutions.

(B) "Undivided profits" includes amounts allocated to undivided profits as a result of a merger; and

(56)(A) "Voting security" means a share, or other evidence of proprietary interest in a state trust company or other company that has as an attribute the right to vote or participate in the election of the board of the state trust company or other company, whether or not the right is limited to the election of fewer than all of the board members.

(B) "Voting security" includes a security that is convertible or exchangeable into a voting security.

23-51-104. Company authorized to act as fiduciary.

(a) A company shall not act as a fiduciary in this state except:

(1) A state trust company;

(2) A state bank;

(3) An association organized under the laws of this state and authorized to act as a fiduciary under § 23-37-101 et seq.;

(4) A national bank having its principal office in this state and authorized by the United States Comptroller of the Currency to act as a fiduciary under 12 U.S.C. § 92a, as it existed on January 1, 2025;

(5) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(6) A subsidiary trust company authorized to act as a fiduciary under § 23-47-801 et seq.;

(7) An out-of-state bank with a branch in this state established or maintained under § 23-48-901 et seq., or a trust office licensed by the

Bank Commissioner under this chapter;

(8) An out-of-state trust company with a trust office or a trust representative office licensed by the commissioner under this chapter; or

(9) A foundation.

(b) A company shall not engage in an unauthorized trust activity.

23-51-105. Trust business.

A state trust company or a state bank may:

(1) Perform any act as a fiduciary;

(2) Engage in any trust business;

(3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this chapter; and

(4) If a state trust company, exercise any other power authorized by § 23-51-401.

23-51-106. Activities not requiring charter or license.

Notwithstanding any other provision of this chapter, a company does not engage in the trust business or in any other business in a manner requiring a charter or license under this chapter or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity that is not an unauthorized trust activity;

(2) Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court or the laws of this state;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Real Estate License Law, § 17-42-101 et seq.;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the State Securities Department or the United States

Securities and Exchange Commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the State Insurance Department to the extent that the activity is regulated by the State Insurance Department;

(7) Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the State Insurance Department under the Arkansas Prepaid Funeral Benefits Law, § 23-40-101 et seq., or engaging in the lawful business of maintaining a perpetual care cemetery trust pursuant to § 20-17-904 or a permanent maintenance fund for perpetually maintained cemeteries under the Cemetery Act for Perpetually Maintained Cemeteries, § 20-17-1001 et seq.;

(8) Acting as trustee under a voting trust as provided by § 4-26-706 or § 4-27-730;

(9) Engaging in other activities expressly excluded from the application of this chapter by rules issued by the Bank Commissioner;

(10) Rendering services customarily performed by a public accountant or a certified public accountant in a manner authorized by the Arkansas State Board of Public Accountancy;

(11) If the company is a trust institution and is not barred by order of the commissioner from engaging in a trust business in this state under this chapter:

(A) Marketing or soliciting in this state through the mails, telephone, any electronic means, or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(B) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(C) Accepting or executing outside of this state a trust of a client or otherwise acting as a fiduciary outside of this state for a client; or

(12) If the company is a foundation, serving as a fiduciary.

23-51-107. Trust business of state trust institution.

(a) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of the state or foreign country,

at:

(1) An office established and maintained under this chapter;

(2) A branch; or

(3) Any other authorized location other than an office or branch.

(b)(1) Except as provided in subdivision (b)(2) of this section, a state trust institution may conduct any activities at an office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent the activities are expressly prohibited by the laws of this state or by any rule or order of the Bank Commissioner applicable to the state trust institution.

(2) The commissioner may waive any prohibition if he or she determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of the state trust institutions.

23-51-108. Trust charters under prior law.

A charter of a corporation that was previously a state trust company incorporated under any laws of this state before the effective date of this act shall continue to be effective and shall operate according to this chapter and other applicable law.

23-51-109. Application of laws relating to general business corporations.

(a) The Arkansas Business Corporation Act, § 4-27-101 et seq., applies to a trust company to the extent not inconsistent with this chapter or the proper business of a trust company, except that a reference to the Secretary of State under the Arkansas Business Corporation Act, § 4-27-101 et seq., means the Bank Commissioner unless the context requires otherwise.

(b) Unless expressly authorized by this chapter or a rule of the commissioner, a trust company shall not take an action authorized by the Arkansas Business Corporation Act, § 4-27-101 et seq., regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which the Arkansas Business Corporation Act, § 4-27-101 et seq., would require a filing with the Secretary of State if the trust company were a business corporation, without first submitting the filing to the

commissioner for the same purposes for which it otherwise would be required to be submitted to the Secretary of State and compliance with this chapter.

(c) The commissioner may adopt rules to limit or refine the applicability of subsection (a) of this section to a trust company or to alter or supplement the procedures and requirements of the Arkansas Business Corporation Act, § 4-27-101 et seq., applicable to an action taken under this chapter.

23-51-110. Engaging in commerce prohibited.

Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company shall not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not part of the state trust business, except as necessary to fulfill a fiduciary obligation to a client.

23-51-111. Name of trust institution.

(a) Except as provided under subsection (b) of this section, a state trust company or out-of-state trust institution may register a name with the Bank Commissioner in connection with establishing a principal office, trust office, or representative trust office in this state under this chapter.

(b) The commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name that is not potentially misleading.

23-51-112. Confidential records.

(a) The following records of the State Bank Department shall be confidential and shall not be subject to disclosure under the Freedom of Information Act, § 25-19-101 et seq. except as stated in this section or according to department rules:

- (1) An examination report filed with the department;
- (2) A record disclosing information obtained from an examination;
- (3) Investigations and reports revealing facts concerning a state trust company or the customers of the organization; and
- (4) Any personal financial statements submitted to the department.

(b) Notwithstanding any provision of this section to the contrary, records deemed confidential according to this section, in the Bank Commissioner's discretion, may be disclosed as follows:

(1) Under a validly issued subpoena and, in the interest of justice, the commissioner may waive the privilege created under this section and produce examination reports and other related documents under the provisions of a protective order entered by a court or administrative tribunal of competent jurisdiction when the order is designed to protect the confidential nature of the information that is disclosed from public dissemination;

(2) An official order of the department may be disclosed within the discretion of the commissioner if the commissioner makes a determination that the disclosure would not give advantage to a competitor or adversely affect the safety and soundness of the state trust company; and

(3) To federal financial institutions' regulatory agencies and financial institutions' regulatory agencies of other states.

(c) The commissioner may promulgate rules about disclosure of confidential information.

#### Subchapter 2 – Supervision

##### 23-51-201. Examination of state trust companies.

(a) The Bank Commissioner shall examine a state trust company at least one (1) time every twenty-four (24) months or more often as the commissioner determines is necessary to safeguard the interests of the public and the safety and soundness of the institution.

(b) A state trust company shall pay to the State Bank Department within ten (10) days after notice from the commissioner in January and July of each year an assessment fee to defray the costs of examination and the costs of operations of the department which will be charged according to an assessment fee schedule approved by the commissioner.

(c) The commissioner may:

(1) Accept examinations of a state trust company by a bank supervisory agency in lieu of an examination under this section; or

(2) Conduct examinations of a state trust company jointly or concurrently with a bank supervisory agency.

(d)(1) A state trust company shall periodically file with the commissioner a copy of its statement of condition and income.

(2) The commissioner may call for a report under subdivision (d)(1) of this section whenever deemed necessary, to obtain a full and complete knowledge of the condition of the state trust company.

23-51-202. Examination of out-of-state trust institutions.

(a)(1) To the extent consistent with § 23-51-203, the Bank Commissioner may make an examination of an office established and maintained in this state under this chapter by an out-of-state trust institution as the commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and according to safe and sound banking practices.

(2) The Arkansas Banking Code of 1997, § 23-45-101 et seq., applies to an examination under subdivision (a)(1) of this section.

(b)(1) The commissioner may require a periodic report regarding an out-of-state trust institution that has established and maintained an office in this state under this chapter.

(2) The periodic report required under subdivision (b)(1) of this section shall be provided by the trust institution or by the home state regulator.

(3) A reporting requirement prescribed by the commissioner under this subsection shall be consistent with the reporting requirements applicable to state trust companies and appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this chapter.

23-51-203. Cooperative agreements.

(a)(1) The Bank Commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of an office in this state of an out-of-state trust institution or an office of a state trust institution in a host state.

(2) The commissioner may accept a party's report of examination and report of investigation in lieu of conducting his or her own examination

or investigation.

(b)(1) The commissioner may contract with a bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of the bank supervisory agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the bank supervisory agency at a reasonable rate of compensation.

(2) A contract under subdivision (b)(1) of this section shall be deemed a sole source contract under § 19-11-232.

(c) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over an office established and maintained in this state by an out-of-state trust institution or an office established and maintained by a state trust institution in any host state, if:

(1) The commissioner may at any time take action independently if the commissioner deems the action to be necessary or appropriate to carry out his or her responsibilities under this chapter or to ensure compliance with the laws of this state; or

(2) In the case of an out-of-state trust institution, the commissioner recognizes the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(d)(1) An out-of-state trust institution that maintains at least one (1) office in this state may be assessed and, if assessed, shall pay supervisory and examination fees according to the laws of this state and rules of the commissioner.

(2) The fees may be shared with other bank supervisory agencies or an organization affiliated with or representing one (1) or more bank supervisory agencies according to agreements between the parties and the commissioner.

23-51-204. Reports of apparent crime.

(a)(1) A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars (\$5,000), or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, officer, or

employee shall report the robbery, shortages, or apparent or suspected misapplication to the Bank Commissioner within forty-eight (48) hours after the time it is discovered.

(2) The initial report required under subdivision (a)(1) of this section may be oral if the report is promptly confirmed in writing.

(b) The trust company or a director, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in a report under subdivision (a)(1) of this section.

### Subchapter 3 – Enforcement

#### 23-51-301. Enforcement.

(a)(1) Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., after notice and opportunity for hearing, the Bank Commissioner may determine:

(A) That an office maintained by an out-of-state trust institution in this state is being operated in violation of the laws of this state or in an unsafe and unsound manner; or

(B) That a company is engaged in an unauthorized trust activity.

(2) In either event as described in subdivision (a)(1) of this section, the commissioner may take enforcement action as he or she would be empowered to take if the office maintained by an out-of-state trust institution or the company were a state trust company, including without limitation issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state.

(b)(1) The commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state under § 23-51-909.

(2) An order under subdivision (b)(1) of this section is effective on the date of issuance or other date as the commissioner shall determine.

(c)(1) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take an action permitted by subsection (a) of this section without notice or opportunity for hearing.

(2) The commissioner shall promptly afford a subsequent hearing upon an application to rescind the action taken under subdivision (c)(1) of this section.

(3) The commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action.

23-51-302. Violation of administrative orders.

(a) The Bank Commissioner may:

(1) Order an authorized trust institution, or subsidiary of an authorized trust institution, or a director, officer, or employee to cease and desist violating this chapter or any lawful rule issued under this chapter;

(2) Order an authorized trust institution, or subsidiary of an authorized trust institution, or a director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and that is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(3) Require the immediate removal from office of an officer, director, or employee of an authorized trust institution who:

(A) Has been found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution; or

(B) Persistently violates the laws of this state or the lawful orders, instructions, and rules issued by the commissioner;

(4) Order a company to cease engaging in an unauthorized trust activity; or

(5) Enter an order under § 23-51-301.

(b)(1) The commissioner may impose a civil money penalty of not more than one thousand dollars (\$1,000) for each violation by an authorized trust institution, or subsidiary of an authorized trust institution, or a director, officer, or employee of an order issued under subdivision (a)(1) of this section.

(2) The commissioner may impose a civil money penalty of not more than five hundred dollars (\$500) per day for each day that an authorized trust institution, or subsidiary of an authorized trust institution, or a director, officer, or employee violates a cease and desist order issued under subdivision (a)(2) or subdivision (a)(3) of this section.

(c)(1) Notice and opportunity for a hearing shall be:

(A) Provided before any of the actions are taken under this section by the commissioner; and

(B) Consistent with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2)(A) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take an action permitted by subsection (a) of this section without notice or opportunity for hearing.

(B) The commissioner shall promptly afford a subsequent hearing upon an application to rescind the action taken under subdivision (c)(2)(A) of this section.

23-51-303. Civil enforcement.

The Bank Commissioner may bring a civil action against a person who the commissioner believes has committed or is about to commit a violation of:

(1) This chapter; or

(2) A rule or order of the commissioner pertaining to this chapter.

23-51-304. Certain criminal offenses.

(a)(1) An officer, director, employee, or shareholder of a state trust company commits an offense if the officer, director, employee, or shareholder of a state trust company knowingly:

(A) Conceals information or a fact or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the Bank Commissioner or an agent of the commissioner; or

(B) For the purpose of concealing information, removes or destroys a book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(2) An officer, director, or employee of a state trust company

commits an offense if the person knowingly makes a false entry in the books or records or in a report or statement of the state trust company.

(3) An offense under this subsection is a Class D felony.

(b) A person who knowingly fails or refuses to file the application for acquisition of control of a state trust company as required by § 23-51-602 commits a Class A misdemeanor.

23-51-305. When commissioner may take possession of state trust company.

(a) The Bank Commissioner may take possession of the business and property of a state trust company to which this chapter is applicable whenever it appears that the state trust company:

(1) Has violated its charter or any laws applicable to the charter of a state trust company;

(2) Is conducting its business in an unauthorized or unsafe manner;

(3) Is in an unsafe or unsound condition to transact its business;

(4) Has an impairment of its capital;

(5) Is in a hazardous condition;

(6) Has become otherwise insolvent;

(7) Has neglected or refused to comply with the terms of an order issued by the commissioner;

(8) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of an appointed or authorized examiner of the commissioner;

(9) Is employing officers who have refused to be examined upon oath regarding its affairs; or

(10) Has made a voluntary assignment of its assets to trustees.

(b) A state trust company that the commissioner takes possession of under this subchapter shall remain in the commissioner's possession until the state trust company is authorized by the commissioner to resume business or until the state trust company is fully liquidated under subchapter 10 of this chapter.

#### Subchapter 4 – Organization of a State Trust Company

23-51-401. Organization and powers of state trust company.

(a)(1) Subject to the other provisions of this chapter, one (1) or more persons may organize and charter a state trust company.

(2) A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(b) Subject to § 23-51-108, a state trust company may exercise the powers of an Arkansas business corporation reasonably necessary or helpful to enable exercise of its specific powers under this chapter.

(c) A state trust company may contribute to community funds, or to charitable, philanthropic, or benevolent instrumentalities conducive to public welfare, amounts that its board considers appropriate and in the interests of the state trust company.

(d) Subject to § 23-51-508, a state trust company may deposit trust funds with itself or an affiliate.

(e) Subject to obtaining any required insurance from the Federal Deposit Insurance Corporation, a state trust company may receive and pay deposits with or without interest, made by agencies of the United States Government or of a state, county, or municipality.

23-51-402. State trust company principal office.

(a) A state trust company shall have and continuously maintain a principal office in this state.

(b) An executive officer at the principal office is an agent of the state trust company for service of process.

(c) A state trust company may change its principal office to any location within this state by filing a written notice with the Bank Commissioner stating:

(1) The name of the state trust company;

(2) The street address of its principal office before the change;

(3) The street address to which the principal office is to be changed; and

(4) A copy of the resolution adopted by the board of the state trust company authorizing the change.

(d) The change of principal office shall take effect thirty (30) days

after the date the commissioner receives the notice under subsection (c) of this section, unless the commissioner establishes another date or unless before that day the commissioner notifies the state trust company that it has to establish to the satisfaction of the commissioner that the relocation is consistent with the original determination made under § 23-51-406 for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the commissioner.

23-51-403. Required capital.

(a) Except as provided in subsection (b) of this section, the Bank Commissioner shall not issue a charter to a state trust company having required capital of less than one million dollars (\$1,000,000).

(b)(1) The commissioner may require additional capital for a proposed or existing state trust company or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company, if the commissioner finds the condition and operations of an existing state trust company or the proposed scope or type of operations of a proposed state trust company requires additional, or permits reduced, capital consistent with the safety and soundness of the state trust company.

(2) The safety and soundness factors to be considered by the commissioner in the exercise of his or her discretion under subdivision (b)(1) of this section include without limitation:

- (A) The nature and type of business conducted;
- (B) The nature and degree of liquidity in assets held in a corporate capacity;
- (C) The amount of fiduciary assets under management;
- (D) The type of fiduciary assets held and the depository of the assets;
- (E) The complexity of fiduciary duties and degree of discretion undertaken;
- (F) The competence and experience of management;
- (G) The extent and adequacy of internal controls;
- (H) The presence or absence of annual unqualified audits by an independent certified public accountant;

(I) The reasonableness of business plans for retaining or acquiring additional capital; and

(J) The existence and adequacy of insurance obtained or held by the state trust company for the purpose of protecting its clients, beneficiaries, and grantors.

(c)(1) The proposed effective date of an order requiring an existing state trust company to increase its capital shall be stated in the order no sooner than twenty (20) days after the date the proposed order is mailed or delivered.

(2) Unless the state trust company requests a hearing before the commissioner in writing before the effective date of the proposed order, the order becomes effective and is final and nonappealable.

(3) This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company under subsection (b) of this section.

(d) Subject to subsection (b) of this section and subchapter 12 of this chapter, a state trust company to which the commissioner issues a charter shall at all times maintain capital in at least the amount required under subsection (a) of this section, plus any additional amount or less any reduction the commissioner directs under subsection (b) of this section.

23-51-404. Change in outstanding capital and surplus.

(a) A state trust company shall not reduce or increase its outstanding capital through dividend, redemption, issuance of shares, or otherwise without the prior approval of the Bank Commissioner, except as permitted by this section or rules adopted under this chapter.

(b) Unless otherwise restricted by rules, prior approval is not required for an increase in capital accomplished through:

(1) Issuance of shares of common stock for cash;

(2) Declaration and payment of pro rata share dividends as defined in the Arkansas Business Corporation Act, § 4-27-101 et seq.; or

(3) Adoption by the board of the state trust company of a resolution directing that all or part of undivided profits be transferred to capital.

(c) Prior approval is not required for a decrease in surplus caused by incurred losses in excess of undivided profits.

23-51-405. Articles of association of state trust company.

(a) The articles of association of a state trust company shall be signed and acknowledged by each organizer.

(b) The articles of association of a state trust company shall include:

(1) The name of the state trust company;

(2) The period of the state trust company's duration, which may be perpetual;

(3) The powers of the state trust company, which may be stated as:

(A) All powers granted to a state trust company in this state; or

(B) A list of the specific powers that the state trust company chooses and is authorized to exercise;

(4) The aggregate number of shares that the state trust company will be authorized to issue, the number of classes of shares, which may be one (1) or more, the number of shares of each class if more than one (1) class, and a statement of the par value of the shares of each class or that the shares are to be without par value;

(5) If the shares are to be divided into classes, the designation of each class and statement of the preferences, limitations, and relative rights of the shares of each class;

(6) Any provision granting to shareholders the preemptive right to acquire additional shares of the state trust company;

(7) Any provision granting the right of shareholders to cumulative voting in the election of directors of the state trust company;

(8) The aggregate amount of consideration to be received for all shares initially issued by the state trust company and a statement signed and verified by the organizers that the capital stock has been fully subscribed and the purchase price for the capital stock has been paid into an escrow account approved by the Bank Commissioner;

(9) Any provision consistent with law that the organizers elect to state in the articles of association for the regulation of the internal affairs of the state trust company or that is otherwise required by this chapter to be stated in the articles of association;

(10) The street address of the state trust company's principal office required to be maintained under § 23-51-402; and

(11) The number of directors or managers constituting the initial board of the state trust company, which shall not be fewer than three (3), and the names and street addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until successor directors have been elected and qualified.

23-51-406. Application for state trust company charter.

(a) An application for a state trust company charter shall be:

(1) Made under oath and in the form required by the Bank Commissioner;

(2) Supported by information, data, records, and opinions of counsel that the commissioner requires.

(3) Accompanied by a nonrefundable filing fee of not less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000) as set by rule of the commissioner; and

(4) Accompanied by proof of escrow of deposit for the required capital.

(b)(1) The commissioner shall grant a state trust company charter only on proof that one (1) or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company.

(2) In making such a determination under subdivision (b)(1) of this section, the commissioner shall:

(A) Examine the business plan which shall be submitted as part of the application for a state trust company charter; and

(B) Consider the following information:

(i) The market or markets to be served;

(ii) Whether or not the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(iii) Whether or not the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(iv) Whether or not the proposed officers and

directors of the state trust company, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(v) Whether or not each principal shareholder of the proposed state trust company has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(vi) Whether or not the organizers of the proposed state trust company are acting in good faith.

(c) The failure of an applicant for a state trust company charter to furnish required information, data, opinions of counsel, other material or the required fee is considered an abandonment of the application.

23-51-407. Notice and investigation of charter application for state trust company.

(a) The Bank Commissioner shall notify the organizers of the proposed state trust company when the application is complete and accepted for filing and all required fees and deposits have been paid.

(b) Upon submission of an application to the commissioner, the organizers of the proposed state trust company shall provide:

(1) Notice through publication of one (1) notice published in a newspaper having a general and substantially statewide circulation; and

(2) Written notice of filing through the United States mail to all trust institutions maintaining a principal office or a trust office in the county wherein the principal office of the proposed state trust company is to be located.

(c)(1) The commissioner shall investigate the application for a charter for a state trust company and inquire into the identity and character of each proposed director, officer, and principal shareholder of the state trust company.

(2) The investigation under subdivision (c)(1) of this section may be conducted at the expense of the organizers of the state trust company.

(3) The commissioner shall prepare a written report of the investigation under this subsection, and any person may request a copy of the nonconfidential portions of the application as provided by the Freedom of Information Act of 1967, § 25-19-101 et seq.

(4)(A) Rules adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the State Bank Department under this section.

(B) Except as provided in rules regarding confidential information, the financial statement of a proposed officer, director, or principal shareholder of the state trust company is confidential and not subject to public disclosure.

23-51-408. Written protest – Filing fee – Hearing and decision on charter application.

(a)(1) A person shall not appear in opposition to an application for a charter for a state trust company unless the person has filed an official protest to the granting of the application within thirty (30) days of the date of the notice of the filing of the application.

(2) The protest filed under subdivision (a)(1) of this section shall:

(A) Be in writing;

(B) State the grounds for objection; and

(C)(i) Be accompanied by a filing fee of not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for each protestant.

(ii) The amount of the filing fee under subdivision (a)(2)(C)(i) of this section is set by rule promulgated by the Bank Commissioner.

(b) Once the written report of investigation under § 23-51-407 has been completed, the commissioner may establish a time for hearing on the charter application.

(c) Notice of the time, place, and purpose of the hearing under subsection (b) of this section shall be given at least thirty (30) days before the hearing, as follows:

(1) By letter from the commissioner to the organizers of the proposed state trust company and to each trust institution to which the

organizers of the application are required to give written notice under § 23-51-407(a);

(2) By letter from the commissioner to each person who has filed an official protest against the application for a charter for a state trust company with the commissioner, provided that if a group of persons has protested the application, the notice may be given to one (1) member of the group; and

(3) By release to news media.

(d)(1) If the commissioner sets a hearing under subsection (b) of this section, the commissioner shall conduct a public hearing.

(2) The commissioner may conduct as many prehearing conferences and opportunities for discovery as the commissioner considers necessary.

(e)(1) Based on the record of a hearing conducted under subsection (d) of this section, the commissioner shall:

(A) Determine whether or not all of the necessary conditions stated in § 23-51-406(b) have been established; and

(B) Enter an order granting or denying the charter for a state trust company.

(2) The commissioner may make approval of any application conditional and shall include any conditions in the order granting the charter.

23-51-409. Issuance of charter.

(a) A state trust company shall not engage in the trust business until it receives its charter from the Bank Commissioner.

(b) The commissioner shall not deliver the charter for a state trust company until the state trust company has:

(1) Elected or qualified the initial officers and directors named in the application for charter or other officers and directors approved by the commissioner; and

(2) Complied with all other requirements of this chapter relative to the organization of a state trust company.

(c) If a state trust company does not open and engage in the trust business within six (6) months after the date it receives its charter or conditional approval of application for charter, or within the period that may have been extended, the commissioner may revoke the charter or cancel the

conditional approval of application for charter without judicial action.

23-51-410. Amendment or restatement of state trust company articles of association.

(a) A state trust company that has been granted a charter under § 23-51-409 or a predecessor statute may amend or restate its articles of association for any lawful purpose, including the creation of authorized but unissued shares in one (1) or more classes or series.

(b) An amendment authorizing the issuance of shares in series shall contain:

(1) The designation of each series and of any variations in the preferences, limitations, and relative rights among series to the extent that the preferences, limitations, and relative rights are to be established in the articles of association; and

(2) A statement of any authority to be vested in the board of the state trust company to establish series and determine the preferences, limitations, and relative rights of each series.

(c)(1) Amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders of the state trust company shall be made according to the Arkansas Business Corporation Act, § 4-27-101 et seq., for the amendment or restatement of articles of incorporation except as otherwise provided by this chapter or rules adopted under this chapter.

(2) The original and one (1) copy of the articles of amendment or restated articles of association shall be filed with the Bank Commissioner for approval.

(3) Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the amendment or restatement within thirty (30) days after the date the commissioner considers the submission complete and accepted for filing.

(4) The commissioner may require the submission of additional information as considered necessary to an informed decision to approve or reject any amendment or restatement of the articles of association under this section.

(d) If the commissioner finds that the amendment or restatement of the articles of association of a state trust company conforms to law and any

conditions imposed by the commissioner, and any required filing fee has been paid, the commissioner shall:

(1) Endorse the face of the original and copy with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records;  
and

(3) Deliver a certified copy to the amendment or restatement to the state trust company.

(e) An amendment or restatement of the articles of association of a state trust company, if approved, takes effect on the date of approval, unless the amendment or restatement provides for a different effective date.

23-51-411. Establishing series of shares.

(a) If the articles of association expressly give the board of a state trust company authority to establish series and determine the preferences, limitations, and relative rights of each series of shares, the board may do so only in compliance with this section and any rules adopted under this chapter.

(b)(1) A series of shares may be established by the board of a state trust company in the manner provided by the Arkansas Business Corporation Act, § 4-27-101 et seq., as if the state trust company were a domestic corporation, but the shares of the series shall not be issued and sold except upon compliance with this section.

(2) The state trust company shall file the original and one (1) copy of the articles of amendment required by the Arkansas Business Corporation Act, § 4-27-101 et seq., with the Bank Commissioner.

(3) Unless the submission presents novel or unusual questions, the commissioner shall approve or reject the series of shares within thirty (30) days after the date the commissioner considers the submission complete and accepted for filing.

(4) The commissioner may require the submission of additional information as considered necessary to an informed decision.

(c) If the commissioner finds that the interests of the clients and creditors of the state trust company will not be adversely affected by the series, that the series of shares otherwise conforms to law and any conditions imposed by the commissioner, and that any required filing fee has

been paid, the commissioner shall:

(1) Endorse the face of the original and copy of the statement with the date of approval and the word "Approved";

(2) File the original in the State Bank Department's records;  
and

(3) Deliver a certified copy of the statement to the state trust company.

23-51-412. Capital notes or debentures.

(a) With the prior written approval of the Bank Commissioner, a state trust company, at any time, through action of its board, and without requiring action of its shareholders, may issue and sell its capital notes or debentures, which shall be subordinate to the claims of depositors and may be subordinate to other claims, including the claims of other creditors or classes of creditors or the shareholders.

(b)(1) Capital notes or debentures may be convertible into shares of any class or series.

(2) The issuance and sale of convertible capital notes or debentures are subject to satisfaction of preemptive rights, if any, to the extent provided by law.

(c) Without the prior written approval of the commissioner, interest due or principal repayable on outstanding capital notes or debentures shall not be paid by a state trust company when the state trust company is in hazardous condition or insolvent, as determined by the commissioner, or to the extent that payment will cause the state trust company to be in hazardous condition or insolvent.

(d) The amount of any outstanding capital notes or debentures that meet the requirements of this section and are subordinated to unsecured creditors of the state trust company may be included in equity capital of the state trust company for purposes of determining hazardous condition or insolvency, and for such other purposes as may be provided by rules adopted under this chapter.

23-51-413. Bylaws.

A state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures stated in

the Arkansas Business Corporation Act, § 4-27-101 et seq.

23-51-414. Board of state trust company.

(a) The board of a state trust company shall be governed by the Arkansas Business Corporation Act, § 4-27-101 et seq., provided that the board shall consist of not fewer than three (3) directors, the majority of whom shall be residents of this state.

(b) Unless the Bank Commissioner consents in writing, a person shall not serve as director of a state trust company if:

(1) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(2) The person has been convicted of a felony; or

(3) The person has violated this chapter relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(c)(1) If a state trust company does not elect directors prior to sixty (60) days after the date of its regular annual meeting, the commissioner may commence a proceeding to appoint a receiver under § 23-51-1003 to operate the state trust company and elect directors or managers, as appropriate.

(2) If the conservator is unable to locate or elect persons willing and able to serve as directors, the commissioner may close the state trust company for liquidation.

(d)(1) A vacancy on the board of a state trust company that reduces the number of directors to fewer than three (3) shall be filled not later than ninety (90) days after the date the vacancy occurs.

(2) If the vacancy has not been filled upon the expiration of ninety (90) days following the date the vacancy occurs, the commissioner may commence a proceeding to appoint a receiver under § 23-51-1003 to operate the state trust company and elect a board of not fewer than three (3) persons to resolve the vacancy.

(3) If the conservator is unable to locate or elect three (3) persons willing and able to serve as directors, the commissioner may close

the state trust company for liquidation.

(e) Before each term to which a person is elected to serve as a director of a state trust company, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(1) Accepts the position and is not disqualified from serving in the position;

(2) Will not violate or knowingly permit an officer, director, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(3) Will diligently perform the duties of the position.

(f) An advisory director is not considered a director if the advisory director:

(1) Is not elected by the shareholders of the state trust company;

(2) Does not vote on matters before the board of a state trust company or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(3) Provides solely general policy advice to the board of a state trust company.

#### 23-51-415. Fiduciary responsibility.

The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) The determination of policies;

(2) The investment and disposition of property held in a fiduciary capacity; and

(3) The direction and review of the actions of an officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

#### 23-51-416. Officers of a state trust company.

(a) The board of a state trust company shall annually elect the officers of the state trust company, who serve at the pleasure of the board.

(b)(1) The state trust company shall have a principal executive

officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures.

(2) The board may appoint other officers of the state trust company as the board considers necessary.

(3) The duties of any two (2) or more officers may be combined by the board and held by one (1) person.

23-51-417. Bonding requirements.

(a) The board of a state trust company shall require protection and indemnity for clients in reasonable amounts established by rules adopted under this chapter against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses with corporate insurance or surety companies:

(1) Authorized to do business in this state; or

(2) Acceptable to the Bank Commissioner and otherwise lawfully permitted to issue the coverage against those losses in this state.

(b) Except as otherwise provided by rule, coverage required under subsection (a) of this section shall include each director, officer, and employee of the state trust company without regard to whether the person receives salary or other compensation.

(c)(1) A state trust company may apply to the commissioner for permission to eliminate the bonding requirement of this section for a particular individual.

(2) The commissioner shall approve the application if the commissioner finds that the bonding requirement is unnecessary or burdensome.

(3) Unless the application presents novel or unusual questions, the commissioner shall approve the application or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing.

23-51-418. Recordkeeping.

(a) A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company.

(b) The fiduciary records under subsection (a) of this section shall

contain all material information relative to each account as appropriate under the circumstances.

Subchapter 5 – Permissible Activities for a State Trust Company

23-51-501. Lending limits.

(a) A state trust company's total outstanding loans and extensions of credit to a person other than an insider shall not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(b)(1) The aggregate loans and extensions of credit outstanding at any time to insiders of the state trust company shall not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(2) A covered transaction between an insider and a state trust company shall be engaged in only on terms and under circumstances, including credit standards, that are substantially the same as those for comparable transactions with a noninsider.

(c)(1) The Bank Commissioner may adopt rules to implement and administer this section.

(2) The commissioner may include rules:

(A) To establish limits, requirements, or exemptions other than those specified by this section for particular classes or categories of loans or extensions of credit; and

(B) Establish collective lending and investment limits.

(d) The commissioner may determine whether a loan or extension of credit made to a person will be attributed to another person for purposes of this section.

(e) A state trust company shall not lend trust deposits, except that a trustee may make a loan to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust.

(f)(1) An officer or director of a state trust company who shall knowingly make or approve a loan in violation of this section or who shall knowingly permit such a loan to be made, or who shall fail to exercise his or her authority to prevent the making of the loan shall be personally liable to the state trust company, or to the commissioner, for the full amount of the loan.

(2) However, written notice of disapproval of the loan, served on the board of the state trust company and also the commissioner at the time the making or existence of the loan first comes to his or her knowledge, shall relieve an officer or director from personal liability.

23-51-502. Investment in state trust company facilities.

(a)(1) Without the prior written approval of the Bank Commissioner, a state trust company shall not directly or indirectly invest an amount in excess of its capital and surplus in state trust company facilities, furniture, fixtures, and equipment.

(2) Except as otherwise provided by rules adopted under this chapter, in computing this limitation a state trust company shall include:

(A) Its direct investment in state trust company facilities;

(B) Any investment in equity or investment securities of a company holding title to a facility used by the state trust company as specified by subdivision (a)(2)(A) of this section;

(C) Any loan made by the state trust company to or on the security of equity or investment securities issued by a company holding title to a facility used by the state trust company; and

(D) Any indebtedness incurred on state trust company facilities by a company:

(i) That holds title to the facility;

(ii) That is an affiliate of the state trust company; and

(iii) In which the state trust company is invested in the manner described by subdivision (a)(2)(B) or subdivision (a)(2)(C) of this section; and

(E) May exclude an amount included under subdivisions (a)(2)(B)-(D) of this section to the extent any lease of a facility from the company holding title to the facility is capitalized on the books of the state trust company.

(b) Real estate acquired for a state trust facility and not improved and occupied by the state trust company ceases to be a state trust company facility on the fifth anniversary of the date of its acquisition, unless the commissioner on application grants written approval to further delay in the

improvement and occupation of the property by the state trust company.

(c) A state trust company shall comply with generally accepted accounting principles, consistently applied, in accounting for its investment in and depreciation of state trust company facilities, furniture, fixtures, and equipment.

23-51-503. Other real estate.

(a) A state trust company shall not acquire real estate except:

(1) As permitted by § 23-51-502 or as otherwise provided by this chapter, including rules adopted under this chapter;

(2) If necessary to avoid or minimize a loss on a loan or investment previously made in good faith; or

(3) With the prior written approval of the Bank Commissioner.

(b) To the extent reasonably necessary to avoid or minimize loss on real estate acquired as permitted by subsection (a) of this section, a state trust company may exchange real estate for other real estate or personal property, invest additional funds in or improve real estate acquired under this subsection or subsection (a) of this section, or acquire additional real estate.

(c) A state trust company shall dispose of any real estate subject to subdivisions (a)(1) and (2) of this section not later than:

(1) The fifth anniversary of the date:

(A) It was acquired, except as otherwise provided by rules adopted under this chapter; or

(B) It ceases to be used as a state trust company facility; or

(2) The third anniversary of the date it ceases to be a state trust company facility as provided by § 23-51-502(b).

(d) A state trust company may apply to the commissioner for one (1) or more extensions of time for disposing of real estate, which the commissioner may grant if the commissioner determines that:

(1) The state trust company has made a good faith effort to dispose of the real estate; or

(2) Disposal of the real estate would be detrimental to the state trust company.

23-51-504. Investment in securities.

(a) A state trust company may invest its corporate funds in any type or character of equity or investment securities subject to the limitations provided by this section.

(b) Unless the Bank Commissioner approves maintenance of a lesser amount in writing, a state trust company shall invest and maintain an amount equal to not less than forty percent (40%) of the state trust company's capital under § 23-51-403 in unencumbered cash, cash equivalents, and readily marketable securities.

(c)(1) Subject to subsection (d) of this section, the total investment in equity and investment securities of any one issuer, obligor, or maker, held by the state trust company for its own account, shall not exceed an amount equal to twenty percent (20%) of the state trust company's capital base.

(2) The commissioner may authorize investments in excess of this limitation on written application if the commissioner concludes that:

(A) The excess investment is not prohibited by other applicable law; and

(B) The safety and soundness of the requesting state trust company is not adversely affected.

(d) Notwithstanding subsection (c) of this section, a state trust company may purchase for its own account, without limitation and subject only to the exercise of prudent judgment:

(1) Direct obligations of the United States Government;

(2) Obligations of agencies and instrumentalities created by act of the United States Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;

(3) Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of the United States Congress and authorized thereby to issue such a guarantee;

(4) Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of the United States Congress and authorized thereby to issue such commitments

or agreements;

(5) General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories or insular possessions of the United States;

(6) Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;

(7) Warrants of political subdivisions of the State of Arkansas and municipalities of the State of Arkansas having maturities not exceeding one (1) year;

(8) Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;

(9) The sale of federal funds with a maturity of not more than one (1) business day;

(10) Demand, savings, or time deposits or accounts of a depository institution chartered by the United States, any state, or the District of Columbia, provided funds invested in the demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;

(11) Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state or any political subdivision of a state, if the repurchase agreement provides for the taking of delivery of the collateral, either directly or through an authorized custodian; and

(12) Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, as it existed on January 1, 2025, if:

(A) The portfolio of the investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations; and

(B) The investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

(e) The commissioner may adopt rules to establish limits, requirements, or exemptions other than those specified by this section for

particular classes or categories of investment, or limit or expand investment authority for state trust companies for particular classes or categories of securities or other property.

23-51-505. Transactions in state trust company shares.

(a) A state trust company may acquire its own shares if:

(1) The amount of its undivided profits is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; and

(2) The state trust company obtains the prior written approval of the Bank Commissioner.

(b) A state trust company shall not make loans upon the security of its own shares.

23-51-506. Mutual funds.

(a) A state trust company may invest for its own account in equity securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as it existed on January 1, 2025, and the Securities Act of 1933, 15 U.S.C. § 77a et seq., as it existed on January 1, 2025, if the portfolio of the investment company consists wholly of investments in which the state trust company could invest directly for its own account.

(b) If the portfolio of an investment company described in subsection (a) of this section consists wholly of investments in which the state trust company could invest directly without limitation under § 23-51-504, the state trust company may invest in the investment company without limitation.

(c)(1) If the portfolio of an investment company described in subsection (a) of this section contains an investment that is subject to the limits of § 23-51-504, the state trust company shall not invest in the investment company more than an amount equal to twenty percent (20%) of the state trust company's capital base.

(2) Subdivision (c)(1) of this section does not apply to a money market fund.

(d) In evaluating investment limits under this chapter, a state trust company shall not be required to combine:

(1) The state trust company's pro rata share of the securities

of an issuer in the portfolio of an investment company with the state trust company's pro rata share of the securities of that issuer held by another investment company in which the state trust company has invested; or

(2) The state trust company's own direct investment in the securities of an issuer with the state trust company's pro rata share of the securities of that issuer held by each investment company in which the state trust company has invested under this section.

23-51-507. Lease financing transactions.

(a)(1) Subject to rules adopted under this chapter, a state trust company may become the owner and lessor of tangible personal property for lease financing transactions on a net lease basis on the specific request and for the use of a client.

(2) Without the written approval of the Bank Commissioner to continue holding property acquired for leasing purposes under this subsection, the state trust company shall not hold the property more than six (6) months after the date of expiration of the original or any extended or renewed lease period agreed to by the client for whom the property was acquired or by a subsequent lessee.

(b)(1) Rental payments received by the state trust company in a lease financing transaction under this section are considered to be rent and not interest or compensation for the use, forbearance, or detention of money.

(2) A lease financing transaction under this section is considered to be a loan or extension of credit for purposes of this subchapter.

23-51-508. Trust funds deposits.

(a) A state trust company may deposit trust funds with itself as an investment if authorized by the settlor or the beneficiary, if:

(1) The state trust company maintains as security for the deposits a separate fund of securities, legal for trust investments, under control of a federal reserve bank or other entity approved by the Bank Commissioner, either in this state or elsewhere;

(2) The total market value of the security is at all times at least equal to the amount of the deposit;

(3) The separate fund is designated as a separate fund; and

(4) The separate fund is maintained under the control of another trust institution, bank, or government agency.

(b)(1) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (a) of this section as long as the required value is maintained.

(2) Income from the securities in the fund belongs to the state trust company.

(c) Security for a deposit under this section is not required for a deposit under subsection (a) of this section to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

23-51-509. Common investment funds.

(a) A state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(b) The Bank Commissioner may adopt rules to implement and administer this section, including without limitation rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to administer this section.

23-51-510. Transactions with management and affiliates.

(a) Without the prior approval of a disinterested majority of the board of a state trust company recorded in the minutes, or if a disinterested majority cannot be obtained the prior written approval of a majority of the disinterested directors of a state trust company and the Bank Commissioner, a state trust company shall not directly or indirectly:

(1) Sell or lease an asset of the state trust company to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company;

(2) Purchase or lease an asset in which an officer, director or principal shareholder of the state trust company or an affiliate of the state trust company has an interest; or

(3) Subject to § 23-51-501, extend credit to an officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company.

(b)(1) Notwithstanding subsection (a) of this section, a lease transaction described in subdivision (a)(2) of this section involving real property shall not be consummated, renewed, or extended without the prior written approval of the commissioner.

(2) For purposes of this subdivision only, an affiliate of the state trust company does not include a subsidiary of the state trust company.

(c) Subject to § 23-51-501, a state trust company shall not directly or indirectly extend credit to an employee, officer, director, or principal shareholder of the state trust company or an affiliate of the state trust company, unless:

(1) The extension of credit:

(A) Is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders, or affiliates of the state trust company; and

(B) Does not involve more than the normal risk of repayment or present other unfavorable features; and

(2) The state trust company follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the state trust company with persons who are not employees, officers, directors, principal shareholders or affiliates of the state trust company.

(d) An officer or director of the state trust company who knowingly participates in or knowingly permits a violation of this section upon conviction is guilty of a Class D felony.

(e) The commissioner may adopt rules to implement and administer this section, including rules to establish limits, requirements, or exemptions other than those specified by this section for particular categories of transactions.

#### 23-51-511. Subsidiaries.

(a) Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary.

(b)(1) A state trust company shall not:

(A) Invest more than an amount equal to twenty percent (20%) of its capital base in a single subsidiary; and

(B) Invest an amount in excess of forty percent (40%) of its capital base in all subsidiaries.

(2) The amount of a state trust company's investment in a subsidiary is the total amount of the state trust company's investment in equity or investment securities issued by its subsidiary and any loans and extensions of credit from the state trust company to its subsidiary.

(3) The Bank Commissioner may authorize investments in excess of these limitations on written application if the commissioner concludes that:

(A) The excess investment is not prohibited by other applicable law; and

(B) The safety and soundness of the requesting state trust company is not adversely affected.

(c) A state trust company that intends to acquire, establish, or perform new activities through a subsidiary shall submit a letter to the commissioner describing in detail the proposed activities of the subsidiary.

(d)(1) The state trust company may acquire or establish a subsidiary or begin performing new activities in an existing subsidiary thirty (30) days after the date the commissioner receives the state trust company's letter submitted under subsection (c) of this section, unless the commissioner specifies another date.

(2) The commissioner may extend the thirty-day period of review on a determination that the state trust company's letter raises issues that require additional information or additional time for analysis.

(3) If the period of review is extended, the state trust company may acquire or establish the subsidiary, or perform new activities in an existing subsidiary, only on prior written approval of the commissioner.

(e)(1) A subsidiary of a state trust company is subject to rules adopted under this chapter.

(2) In the absence of rules, the commissioner may regulate a subsidiary as if it were a state trust company.

#### Subchapter 6 – Acquisition of Control

23-51-601. Acquisition of control – Limitations.

(a) Except as expressly otherwise permitted, a person shall not, without the prior written approval of the Bank Commissioner, directly or indirectly acquire control of a state trust company through a change in a legal or beneficial interest in voting securities of a state trust company or a corporation or other entity owning voting securities of a state trust company.

(b) This subchapter does not prohibit a person from negotiating to acquire control of a state trust company or a person that controls a state trust company.

(c) This section does not apply to:

(1) The acquisition of securities in connection with the exercise of a security interest or otherwise in full or partial satisfaction of a debt previously contracted for in good faith if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired;

(2) The acquisition of voting securities in any class or series by a controlling person who has previously complied with and received approval under this chapter or who was identified as a controlling person in a prior application filed with and approved by the commissioner;

(3) An acquisition or transfer by operation of law, will, or intestate succession if the acquiring person files written notice of acquisition with the commissioner before the person votes the securities acquired; or

(4) A transaction exempted by the commissioner by rule or order because the transaction is not within the purposes of this subchapter or the rule of the commissioner that the transaction is not necessary or appropriate to achieve the objectives of this subchapter.

23-51-602. Application for acquisition of control.

(a) The proposed transferee seeking approval to acquire control of a state trust company or a corporation or other entity that controls a state trust company shall file with the Bank Commissioner:

(1) An application in the form prescribed by the commissioner;

(2) The filing fee in an amount not less than one thousand five hundred dollars (\$1,500) and not more than three thousand dollars (\$3,000),

as set by rules issued by the commissioner; and

(3) All information required by rule or that the commissioner requires in a particular application as necessary to make an informed decision to approve or reject the proposed acquisition.

(b) If the proposed transferee includes any group of individuals or entities acting in concert, the information required by the commissioner may be required of each member of the group.

(c) If the proposed transferee is not an Arkansas resident, an Arkansas company, or an out-of-state company qualified to do business in this state, a written consent to service of process on a resident of this state is required for any action or suit arising out of or connected with the proposed acquisition.

(d) The proposed transferee shall give public notice of the application, its date of filing, and the identity of each participant, in the form specified by the commissioner, through publication by one (1) insertion in a newspaper of general statewide circulation, promptly after the commissioner accepts the application as complete.

23-51-603. Hearing and decision on acquisition of control.

(a)(1) Not later than sixty (60) days after the application for acquisition of control is officially filed under § 23-51-602, the Bank Commissioner may approve the application or set the application for hearing.

(2) If the commissioner sets a hearing, the commissioner shall conduct a hearing as he or she considers advisable and consistent with governing statutes and rules.

(b) Based on the record, the commissioner may issue an order denying an application for acquisition of control if:

(1) The acquisition of control would substantially lessen competition, be in restraint of trade, or is not in the public interest, unless:

(A) The anticompetitive effects of the proposed acquisition of control are clearly outweighed in the public interest by the probable effect of acquisition of control in meeting the convenience and needs of the community to be served; and

(B) The proposed acquisition of control is not in violation of law of this state or the United States;

(2) The financial condition of the proposed transferee, or any member of a group composing the proposed transferee, might jeopardize the financial stability of the state trust company being acquired;

(3) Plans or proposals to operate, liquidate, or sell the state trust company or its assets are not in the best interests of the state trust company;

(4) The experience, ability, standing, competence, trustworthiness, and integrity of the proposed transferee, or any member of a group comprising the proposed transferee, are insufficient to justify a belief that the state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law;

(5) The state trust company will be insolvent, in a hazardous condition, not have adequate capitalization, or not be in compliance with the laws of this state after the acquisition;

(6) The proposed transferee has failed to furnish all information pertinent to the application reasonably required by the commissioner; or

(7) The proposed transferee is not acting in good faith.

(c)(1) If an application for acquisition of control filed under § 23-51-602 is approved by the commissioner under this section, the transaction may be consummated.

(2) Any written commitment from the proposed transferee offered to and accepted by the commissioner as a condition that the application will be approved is enforceable against the state trust company and the transferee and is considered for all purposes an agreement under this subchapter.

23-51-604. Appeal from adverse decision.

(a)(1) If a hearing has been held and the Bank Commissioner has entered an order denying the application for acquisition of control filed under § 23-51-602 and the order has become final, the proposed transferee may appeal the final order by filing a petition for judicial review under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The time for filing a petition for judicial review under subdivision (a)(1) of this section shall run from the date the final decision of the commissioner is mailed or delivered, in written form, to the parties

desiring to appeal.

(b) The filing of an appeal under this section does not stay the order of the commissioner.

23-51-605. Objection to other transfer.

This subchapter shall not be construed to prevent the Bank Commissioner from investigating, commenting on, or seeking to enjoin or set aside a transfer of voting securities that evidence a direct or indirect interest in a state trust company, whether or not the transfer is included within this subchapter, if the commissioner considers the transfer to be against the public interest.

Subchapter 7 – Mergers, Purchases and Assumptions, and Sale of Assets

23-51-701. Merger authority.

(a) With the prior written approval of the Bank Commissioner, a state trust company may merge:

(1) With and into a state bank to the same extent as a state bank under the Arkansas Banking Code of 1997, chapters 45-50 of this title; or

(2) With another person to the same extent as a business corporation under the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., subject to this chapter.

(b) The approval of the board and the shareholders of both the state trust company and the state bank who are parties to the merger shall be obtained according to § 23-48-503 as if the state trust company were a state bank, except as otherwise provided by rules adopted under this chapter.

(c) The approval of the board and the shareholders of both the state trust company and the person or named entities who are parties to the merger shall be obtained according to the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., as if the state trust company were a domestic corporation, except as otherwise provided by rules adopted under this chapter.

23-51-702. Merger application.

(a) To apply for a merger under this subchapter, two (2) original

copies of the articles of merger and an application in the form required by the Bank Commissioner shall be filed with the commissioner.

(b) The commissioner shall investigate the condition of the merging parties.

(c) The commissioner may require the submission of additional information as considered necessary to an informed decision.

23-51-703. Approval of merger by Bank Commissioner.

(a) The Bank Commissioner may approve a merger under this subchapter if:

(1) A resulting state trust company will be solvent and have adequate capitalization for its business and location;

(2) A resulting state trust company has in all respects complied with the statutes and rules relative to the organization of a state trust company;

(3) All fiduciary obligations and liabilities of a state trust company that is a party to the merger have been properly discharged or otherwise lawfully assumed or retained by a state trust company or other fiduciary;

(4) A surviving, new, or acquiring person that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state; and

(5) All conditions imposed by the commissioner have been satisfied or otherwise resolved.

(b) If the commissioner approves the merger under this section and finds that all required filing fees and investigative costs have been paid, the commissioner shall:

(1) Endorse the face of both original copies of the articles of merger with the date of approval and the word "Approved";

(2) File one (1) original copy of the articles of merger in the State Bank Department's records; and

(3) Deliver one (1) original copy of the articles of merger to each surviving, new, or acquiring entity.

(c) A merger approved under this section is effective on the date of approval, unless the merger agreement provides and the commissioner consents to a different effective date.

23-51-704. Rights of dissenters to mergers.

A shareholder of the state trust company may dissent from a merger under this subchapter to the extent and by following the procedure provided by the Arkansas Business Corporation Act of 1987, § 4-27-101 et seq., or rules adopted under this chapter.

23-51-705. Authority to purchase assets of another trust institution.

(a)(1) Subject to this section, a state trust company may purchase assets of another state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution.

(2) Except as otherwise expressly provided by this chapter or any other applicable statutes, the purchase of all or part of the assets of the trust institution does not make the purchasing state trust company responsible for any liability or obligation of the selling trust institution that is not expressly assumed by the purchasing state trust company.

(3) Except as otherwise provided by this chapter, this subchapter does not govern or prohibit the purchase by a trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

(b)(1) An application in the form required by the Bank Commissioner shall be filed with the commissioner for any acquisition of all or substantially all of:

(A) The assets of a state trust company; or

(B) The trust assets of another trust institution by a state trust company.

(2) The commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision.

(3) The commissioner shall approve the purchase if:

(A) The acquiring state trust company will be solvent, not in a hazardous condition, and have sufficient capital for its business and location;

(B) The acquiring state trust company has complied with all applicable statutes and rules, including without limitation any

applicable requirements of §§ 23-51-903 and 23-51-906;

(C) All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring state trust company;

(D) All conditions imposed by the commissioner have been satisfied or otherwise resolved; and

(E) All fees and costs have been paid.

(c) A purchase requiring an application under subsection (b) of this section is effective on:

(1) The date of approval; or

(2) On the effective date stated in the purchase agreement if the commissioner consents to that date.

(d) The acquiring state trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust institution under each account included in the assets acquired.

23-51-706. Sale of assets.

(a) The board of a state trust company, with the Bank Commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the state trust company, without shareholder approval if the commissioner finds:

(1) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company;

(2) The sale is in the best interest of the state trust company's clients and creditors; and

(3) The Federal Deposit Insurance Corporation or its successor approves the transaction unless the deposits of the state trust company are not insured.

(b) A sale under this section shall include an assumption and promise by the buyer to pay or otherwise discharge:

(1) All of the state trust company's liabilities to clients and depositors;

(2) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) Obligations incurred by the commissioner arising out of the

supervision or sale of the state trust company; and

(4) Fees and assessments due the State Bank Department.

(c) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(d)(1) This section does not affect the commissioner's right to take action under any other law.

(2) The sale by a state trust company of all or substantially all of its assets with shareholder approval is deemed a voluntary dissolution and liquidation and shall be governed by subchapter 10 of this chapter.

### Subchapter 8 – Trust Offices

23-51-801. Branches of offices of state trust institutions.

(a) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this chapter and at a branch.

(b) Notwithstanding subsection (a) of this section, a state bank or a state trust company shall not engage at an out-of-state office in any trust business not permitted to be conducted at the out-of-state office by the laws of the host state applicable to trust institutions chartered by the host state.

23-51-802. Trust offices and representative trust offices.

(a)(1) A state trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this state.

(2) A state trust institution desiring to establish or acquire and maintain a trust office or representative trust office under subdivision (a)(1) of this section shall file an application with the Bank Commissioner providing:

(A) The name of the state trust institution;

(B) The location of the proposed additional trust office or representative trust office;

(C) A general description of the surrounding market area;

(D) Whether or not the location will be owned or leased;

(E) A copy of the resolution adopted by the board of the state trust institution authorizing the additional trust office or

representative trust office;

(F) A general description of the activities to be conducted;

(G) An estimate of the cost of the trust office or representative trust office;

(H) Any additional information required by commissioner;  
and

(I) The payment for the filing fee, if any, prescribed by the commissioner.

(c) The commissioner may deny approval of the additional trust office or representative trust office under subsection (a) of this section if the commissioner finds that the applicant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed trust office or representative trust office would be contrary to the public interest.

23-51-803. Out-of-state trust offices or representative trust offices.

(a)(1) A state bank, a state trust company, or a savings association chartered under the laws of this state may establish and maintain a new trust office or representative trust office or acquire and maintain a trust office or representative trust office in a state other than this state.

(2) A trust institution desiring to establish or acquire and maintain a trust office or representative trust office in another state under this section shall file an application in the form prescribed by the Bank Commissioner.

(3) The application required under subdivision (a)(2) of this section shall provide:

(A) The name of the trust institution;

(B) The location of the proposed trust office or representative trust office;

(C) A general description of the surrounding market area;

(D) Whether or not the location will be owned or leased;

(E) Whether or not the laws of the jurisdiction where the trust office or representative trust office will be located permit the trust office or representative trust office to be maintained by the trust institution;

(F) A copy of the resolution adopted by the board authorizing the out-of-state trust office or representative trust office; and

(G) The payment for the filing fee, if any, prescribed by the commissioner.

(b) An applicant under this section may commence business at the additional trust office or representative trust office thirty (30) days after the date the commissioner receives the application, unless the commissioner specifies another date.

(c)(1) The thirty-day period of review under subsection (b) of this section may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis.

(2) If the period of review is extended, the trust institution may establish the additional trust office or representative trust office only on prior written approval by the commissioner.

(d)(1) The commissioner may deny approval of the additional trust office or representative trust office under this section if the commissioner finds that the applicant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed additional trust office or representative trust office would be contrary to the public interest.

(2) In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

#### Subchapter 9 – Trust Offices of Out-of-State Trust Institutions

23-51-901. Out-of-state trust institution – Engaging in trust business at branch or trust office.

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at a trust office in this state only if it maintains a trust office in this state as permitted by this chapter or a branch in this state.

23-51-902. Establishing interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may

establish and maintain a new trust office in this state.

(b) An out-of-state trust institution shall not establish a new trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to establish a new trust office that may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-901 in the state where the out-of-state trust institution has its principal office.

23-51-903. Conditions for approval.

(a) A trust office of an out-of-state trust institution shall not be acquired or established in this state under this chapter unless:

(1) The out-of-state trust institution has confirmed in writing to the Bank Commissioner that for as long as the out-of-state trust institution maintains a trust office in this state, the out-of-state trust institution will comply with all applicable laws of this state;

(2) The applicant has provided satisfactory evidence to the commissioner of compliance with any applicable requirements of § 4-27-1501 et seq. and the applicable requirements of the applicant's home state regulator for acquiring or establishing and maintaining the trust office; and

(3) The commissioner, acting within sixty (60) days after receiving an application under § 23-51-906, has certified to the home state regulator that the requirements of this chapter have been met and the application has been approved or, if applicable, that any conditions imposed by the commissioner under subsection (b) of this section have been satisfied.

(b) The out-of-state trust institution may commence business at the trust office sixty (60) days after the date the commissioner receives the application required under this chapter unless the commissioner specifies another date, if, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner has conditioned the approval on the satisfaction by the applicant of any requirement applicable to a state trust company under § 23-51-403 or § 23-51-406(b), the institution has satisfied the conditions and provided to the commissioner satisfactory evidence that the conditions have been satisfied.

(c)(1) The sixty-day period of review under subsection (b) of this section may be extended by the commissioner on a determination that the application raises issues that require additional information or additional

time for analysis.

(2) If the period of review is extended, the out-of-state trust institution may establish the trust office only on prior written approval by the commissioner.

(d)(1) The commissioner may deny approval of the trust office under this section if the commissioner finds that the applicant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest.

(2) In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

23-51-904. Additional trust offices.

An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional trust offices or representative trust offices in this state under § 23-51-802.

23-51-905. Acquiring interstate trust office.

(a) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may acquire and maintain a trust office in this state.

(b) An out-of-state trust institution shall not maintain a trust office in this state unless a similar institution chartered under the laws of this state to act as a fiduciary is permitted to acquire and maintain a trust office through an acquisition of a trust office in the state where the out-of-state trust institution has its principal office and may engage in activities substantially similar to those permitted to trust offices of out-of-state trust institutions under § 23-51-901 in the state where the out-of-state trust institution has its principal office.

23-51-906. Requirement of notice.

(a) An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state under this chapter shall provide, or cause its home state regulator to

provide, written notice of the proposed transaction to the Bank Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office.

(b) The filing of the notice under subsection (a) of this section shall be preceded or accompanied by a copy of the resolution adopted by the board of the out-of-state trust institution authorizing the additional trust office and the filing fee, if any, prescribed by the commissioner.

23-51-907. Trust business of out-of-state trust institution.

An out-of-state trust institution that establishes or maintains one (1) or more trust offices in this state under this subchapter may conduct any activity at each trust office that would be authorized under the laws of this state for a state trust institution to conduct at a trust office.

23-51-908. Representative trust office business.

(a) An out-of-state trust institution shall not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this subchapter.

(b) Subject to the requirements contained in this subchapter, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

23-51-909. Registration of representative trust office.

(a)(1) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state.

(2) An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire and maintain a representative trust office shall file an application in the form prescribed by the Bank Commissioner.

(3) The application under subdivision (a)(2) of this section shall provide:

- (A) The name of the out-of-state trust institution;
- (B) A certificate of good standing from the out-of-state trust institution's chartering authority;
- (C) A copy of the resolution adopted by the board

authorizing the representative trust office of the out-of-state trust institution; and

(D) The payment for the filing fee, if any, prescribed by the commissioner.

(b) An applicant under subsection (a) of this section may commence business at the representative trust office on the thirty-first day after the date the commissioner acknowledges receipt of the application, unless the commissioner specifies an earlier or later date.

(c)(1) The thirty-day period of review under subsection (a) of this section may be extended by the commissioner on a determination that the application raises issues that require additional information or additional time for analysis.

(2) If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the commissioner.

(d)(1) The commissioner may deny approval of the representative trust office under this section if the commissioner finds that the applicant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed representative trust office would be contrary to the public interests.

(2) In acting on the application, the commissioner shall consider the views of the appropriate bank supervisory agencies.

#### Subchapter 10 – Liquidation

##### 23-51-1001. Voluntary liquidation.

(a) A state trust company may go into voluntary liquidation and be closed, and may surrender the state trust company's charter and franchise as a corporation of this state by the affirmative votes of the shareholders of the state trust company owning a majority of the voting stock of the state trust company.

(b)(1) Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders called by resolution of the board of the state trust company.

(2) The written notice required under subdivision (b)(1) of this section shall state the purpose of the meeting and be mailed to each

shareholder, or in case of a shareholder's death, to the shareholder's legal representative, addressed to the shareholder's last known residence not less than ten (10) days before the date of the meeting.

(3) If shareholders elect to liquidate a state trust company under subsection (a) of this section, a certified copy of all proceedings of the meeting at which the action has been taken, attested by an officer of the state trust company, shall be transmitted to the Bank Commissioner for approval.

(c)(1) If the commissioner approves the liquidation, the commissioner shall issue to the state trust company under the commissioner's seal, an order for that purpose.

(2) An order shall not be issued by the commissioner under subdivision (c)(1) of this section until the commissioner is satisfied that provision has been made by the state trust company to satisfy and pay off all creditors.

(3)(A) When the commissioner approves the voluntary liquidation of a state trust company, the board of the state trust company shall:

(i) Publish a notice in a newspaper with a substantially statewide circulation published in the City of Little Rock that the state trust company is closing down its affairs and going into liquidation; and

(ii) Notify the creditors of the state trust company to present their claims for payment.

(B) The notice required under subdivision (c)(3)(A)(i) of this section shall be published one (1) time a week for four (4) consecutive weeks.

(d) When a state trust company is in the process of voluntary liquidation, the state trust company is subject to examination by the commissioner and shall furnish reports from time to time as the commissioner may require.

(e) All unclaimed property remaining in the hands of a liquidated state trust company is subject to the Unclaimed Property Act, § 18-28-201 et seq.

(f)(1) Upon the approval of the commissioner, a state trust company may sell and transfer to another trust institution, whether state or federally chartered, all of its assets of every kind upon terms as may be

agreed upon and approved by the commissioner and by a majority vote of its board.

(2) A certified copy of the minutes of a meeting at which an action is taken, attested by an officer of the state trust company, together with a copy of the contract of sale and transfer, shall be filed with the commissioner.

(3) Whenever voluntary liquidation is approved by the commissioner or the sale and transfer of the assets of any state trust company is approved by the commissioner, the charter of the state trust company shall be canceled, subject, however, to its continued existence, as provided by this chapter and the Arkansas Business Corporation Act, § 4-27-101 et seq.

23-51-1002. Placing state trust company under Bank Commissioner's control.

(a)(1) A state trust company may place its assets and business under the control of the Bank Commissioner for liquidation by a resolution of a majority of its directors or members upon notice to the commissioner.

(2) Upon taking possession of the state trust company, the commissioner, or the commissioner's appointed agent, shall retain possession of the state trust company until the state trust company is authorized by the commissioner to resume business or until the affairs of the state trust company has fully liquidated under this chapter.

(3) A state trust company shall not make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the commissioner, as provided under this chapter.

(b) If for any reason a state trust company suspends operations for any length of time, the state trust company immediately upon the suspension of operations, shall be deemed in the possession of the commissioner and subject to liquidation under this chapter.

23-51-1003. Application of Arkansas Banking Code of 1997.

When the Bank Commissioner, or the commissioner's appointed agent, takes possession of a state trust company under this subchapter, the commissioner or the commissioner's appointed agent shall proceed with the dissolution and liquidation of the state trust company under the procedures

established for the dissolution and liquidation of state banks under the Arkansas Banking Code of 1997, chapters 45-50 of this title.

Subchapter 11 – Trusts and Fiduciaries

23-51-1101. Delegation and fiduciary responsibility.

(a) A person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management, or administrative function if the person exercises reasonable care, judgment, and caution in:

(1) Selecting the delegate, taking into account the delegate's financial standing and reputation;

(2) Establishing the scope and other terms of any delegation;  
and

(3) Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

(b) Notwithstanding any delegation permitted under subsection (a) of this section, a person acting as a trustee, except as provided in § 28-73-807, or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

23-51-1102. Affiliates.

(a) A person acting as a trustee or in any other fiduciary capacity under § 23-51-1101, may hire and compensate, as a delegate, an affiliate of the person if:

(1) Authorized by a trust or fiduciary instrument;

(2) Authorized by court order;

(3) Authorized in writing by each affected client; or

(4) The standards of § 23-51-1101 are satisfied.

(b) Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services.

23-51-1103. Fee determination.

The compensation arrangement between a client and a person acting as a trustee or as any other fiduciary under this chapter shall be at arm's

length, and any compensation under such an arrangement shall be a reasonable amount with respect to the services rendered.

23-51-1104. Disclosure of potential conflicts of interest.

A company, proposing to act as a trustee or in any other fiduciary capacity under a written agreement to be entered into with a prospective client after September 1, 2025, and that company has any potential or actual conflict of interest that may reasonably be expected to have an impact on the independence or judgment of the trustee or fiduciary, shall disclose appropriate information concerning the actual or potential conflict of interest before entering into any written or oral trust or fiduciary agreement with the client or prospective client.

23-51-1105. Designation of trustee.

A person residing in this state may designate any trust institution to act as a fiduciary on behalf of the person.

23-51-1106. Choice of law governing trusts.

A trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern any written agreement between the trust institution and its client or any instrument under which the trust institution acts for a client.

23-51-1107. Choice of law governing fiduciary investments.

A trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate either this state, a state where affected clients reside, or the state where the trust institution has its principal office as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between the trust institution or its client and any other instrument under which the trust institution acts for a client.

Subchapter 12 – Private Trust Company

23-51-1201. Private trust company.

(a) A private trust company engaging in the trust business in this state shall comply with the provisions of this chapter applicable to a trust company unless expressly exempted from those provisions in writing by the Bank Commissioner under this section or by rule adopted by the commissioner.

(b)(1) A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of §§ 23-51-110, 23-51-403(a), 23-51-405(b)(11), 23-51-406(b)(1), 23-51-407, 23-51-501, 23-51-503, and 23-51-506(b)-(d).

(2) The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public.

(c) An exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this subchapter.

(d)(1) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption.

(2) Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption or set the application for hearing not later than sixty (60) days after the date the commissioner considers the application complete and accepted for filing.

(3) The commissioner may require the submission of additional information as considered necessary to an informed decision.

23-51-1202. Definitions.As used in this subchapter:

(1) "Family member" means an individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or that is controlled by one (1) or more trusts or charitable organizations established by the individual or individuals; and

(2) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole

proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent (100%) owned by one (1) or more family members.

23-51-1203. Requirements for a private trust company.

(a)(1) A private trust company requesting an exemption from this chapter under § 23-51-1201 shall file an application with the Bank Commissioner containing:

(A) A nonrefundable application fee of an amount not less than three thousand dollars (\$3,000) nor more than five thousand dollars (\$5,000), as set by rules issued by the commissioner;

(B) A detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) A statement under oath of the reason for requesting the exemption;

(D) A statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the commissioner;

(E) The current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a United States Postal Service post office box or a private mailbox, postal box, or mail drop;

(F) A listing of the specific provisions of this chapter for which the request for exemption is made; and

(G)(i) A certification that the private trust company is managed by, and its members are family members.

(ii) All individuals who control a private trust company or establish trusts or charitable organizations controlling the private trust company shall be related within the second degree of affinity or consanguinity.

(2) The commissioner shall not approve a private trust company exemption unless the application is completed as required in subdivision

(a)(1) of this section.

(b) To maintain status as an exempt private trust company under this chapter, the exempt private trust company shall:

(1) Not transact business with the public;

(2)(A) File an annual certification that it is maintaining the conditions and limitations of its exempt status.

(B) The annual certification required under subdivision (b)(2)(A) of this section shall be filed:

(i) On a form provided by the commissioner and be accompanied by a fee set by rules issued by the commissioner; and

(ii) On or before June 30 of each year.

(C)(i) An annual certification shall not be valid unless it bears an acknowledgment stamped by the State Bank Department.

(ii) The department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the exempt private trust company.

(iii) The burden shall be on the exempt private trust company to notify the department of a failure to return an acknowledged copy of an annual certification within the thirty-day period.

(iv) The commissioner may examine or investigate the exempt private trust company periodically as necessary to verify the annual certification;

(3) Comply with the principal office provisions of § 23-51-402 and with the address and telephone requirements of subdivision (a)(1)(E) of this section; and

(4) Pay all applicable corporate franchise taxes.

23-51-1204. Change of control.

(a) Control of an exempt private trust company shall not be transferred or sold with exempt status.

(b) In a change of control, the acquiring control person shall comply with this chapter, and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer.

(c) A separate application for exempt status shall be filed if the acquiring person wishes to obtain or continue an exemption under this section.

23-51-1205. Authority to revoke.

(a) The Bank Commissioner may revoke the exempt status of a private trust company if the private trust company:

(1) Makes a false statement under oath on a document required to be filed under this chapter or by any rule promulgated by the commissioner;

(2) Fails to submit to an examination as required by § 23-51-1201(c);

(3) Withholds requested information from the commissioner; or

(4) Violates any provision of this section applicable to an exempt private trust company.

(b)(1) If the commissioner determines from examination or other credible evidence that a private trust company has violated any of the requirements of this section, the commissioner may by personal delivery or registered or certified mail, return receipt requested, notify the private trust company in writing that the private trust company's exempt status has been revoked.

(2) The notification required under subdivision (b)(1) of this section shall:

(A) State grounds for the revocation with reasonable certainty; and

(B) State the effective date of the revocation, which may not be sooner than five (5) calendar days after the date the notification is mailed or delivered.

(c)(1) A revocation under this section takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date.

(2) After taking effect the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of this chapter applicable to state trust companies.

(d)(1) A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this chapter from which it was formerly exempt.

(2) If, however, the commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting

to engage in acts intended or designed to deceive or defraud the public, the commissioner may shorten or eliminate, in the commissioner's sole discretion, the five (5) calendar days compliance period.

(e) If the private trust company does not comply with this subchapter, including the capitalization requirements as have been determined by the commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the commissioner may:

(1) Institute any action or remedy prescribed by this chapter, or any applicable rule; or

(2) Refer the private trust company to the Attorney General for to initiate a quo warranto proceeding to revoke the charter.

23-51-1206. Conversion to public trust company.

(a)(1) A private trust company may terminate its status as a private trust company and commence transacting business with the general public.

(2) A private trust company desiring to commence transacting business with the general public shall file an application on a form prescribed by the Bank Commissioner.

(3) The application required under subdivision (a)(2) of this section shall provide:

(A) The name of the private trust company;

(B) An acknowledgment that any exemption granted or otherwise applicable to the private trust company under this subchapter, shall cease to apply on the effective date of the notice;

(C) A copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public; and

(D) The payment of the filing fee, if any, prescribed by the commissioner.

(b) The applicant may commence transacting business with the general public thirty (30) days after the application is approved by the commissioner, unless the commissioner specifies another date.

(c)(1) The thirty-day period of review under subsection (b) of this section may be extended by the commissioner on determination that the application raises issues that require additional information or additional time for analysis.

(2) If the period for review is extended, the applicant may commence transacting business with the public only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the application of the private trust company to commence transacting business with the general public if the commissioner finds that the:

(1) Applicant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;

(2) Proposed transacting of business with the general public would be contrary to the public interest; or

(3) Applicant will not within a reasonable period be in compliance with any provision of this chapter from which the applicant had been previously exempted under this subchapter.

*/s/J. Boyd*

**APPROVED: 3/4/25**