

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1717

By: Representatives Williams, Vines

For An Act To Be Entitled

AN ACT TO REPEAL CERTAIN OBSOLETE LAWS CONCERNING
PUBLIC UTILITIES AND REGULATED INDUSTRIES UNDER TITLE
23 OF THE ARKANSAS CODE; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL CERTAIN OBSOLETE LAWS
CONCERNING PUBLIC UTILITIES AND REGULATED
INDUSTRIES UNDER TITLE 23 OF THE ARKANSAS
CODE.

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

SECTION 1. Arkansas Code § 23-2-101(d), concerning the maximum salary for commissioners which has been superseded by subsequent appropriations acts for the Arkansas Public Service Commission, is repealed.

~~(d) Each commissioner shall receive an annual salary of five thousand dollars (\$5,000), payable semimonthly or monthly in conformity with prevailing practices of other officers of the state.~~

SECTION 2. Arkansas Code § 23-3-512(b), concerning appeals to the Supreme Court which has been superseded by the Arkansas Rules of Appellate Procedure and the Arkansas Rules for Inferior Courts, is repealed.

~~(b) The appeal may be taken through the filing of notice of appeal as prescribed in §§ 16-67-310 [superseded] and 16-67-312 [superseded], and in all respects the procedure in taking, perfecting, and prosecution of the appeal, including the preparation and filing with the Arkansas Supreme Court of the record, shall be controlled by the then applicable statutes regulating~~



~~appeals to the Arkansas Supreme Court from the circuit court.~~

SECTION 3. Arkansas Code § 23-37-208(a), concerning the investigatory powers of the Securities Commissioner as Supervisor of Savings and Loan Associations, is amended to read as follows:

(a) For the purpose of any investigation, examination, inquiry, or proceeding under this chapter ~~or the Building and Loan Association Act, § 23-38-101 et seq.~~, the Supervisor of Savings and Loan Associations or any officer designated by the supervisor may administer oaths and affirmations, subpoena witnesses or documents, compel their attendance, take evidence, and require the production of any books, papers or correspondence, memoranda, agreements, or other documents which the supervisor deems relevant or material to the inquiry or examination.

SECTION 4. Arkansas Code Title 23, Chapter 38, which is regulated under Arkansas Code Title 23, Chapter 37, is repealed.

~~23-38-101. Definitions.~~

~~As used in this act, unless the context otherwise requires:~~

~~(1) "Building and loan association" means any association or corporation which is chartered under any building and loan law, which is principally in the business of assisting its members to buy, improve, or build homes or to remove encumbrances therefrom, and which accumulates the funds loaned through the issuance or sale of its own shares or certificates;~~

~~(2) "Domestic association" means any association chartered under the laws of this state;~~

~~(3) "Foreign association" means any association chartered under the laws of any other state or territory of the United States;~~

~~(4)(A) "Guaranty, or permanent stock building and loan association" means a financial institution incorporated by the state which has for its purposes those outlined in subdivision (1) of this section and which issues a class of stock known as "guaranty capital stock", "permanent capital stock", or "reserve capital stock", as provided in Acts 1929, No. 128, § 18 [repealed].~~

~~(B) Par funds derived from the sale of the shares shall be set apart and be a fixed and permanent guaranty or reserve to holders of all other shares or certificates and to all other customers of the association~~

~~that the association will fulfill its agreement as per terms of contract with them.~~

~~(C) "Guaranty", "permanent", or "reserve capital stock" cannot be withdrawn until final liquidation of the association, and no loans shall ever be made by the association upon the pledge of the stock as security; and~~

~~(5) "Mutual building and loan association" means a mutual, cooperative financial institution, incorporated by the state and composed of members who associate themselves together for mutual benefit and the purposes outlined in subdivision (1) of this section.~~

~~23-38-102. Annual reports.~~

~~(a)(1) Within sixty (60) days after December 31 each year, every building and loan association operating under the provisions of this act shall file with the Securities Commissioner a statement of its financial condition at the close of its business on December 31 setting forth such details of its financial condition upon such blanks as may be prescribed by the commissioner.~~

~~(2)(A) Unless an extension of time is granted in writing by the commissioner, failure to file the statement within the time mentioned shall be a violation punishable by a fine of one hundred dollars (\$100) for each day the statement is delinquent.~~

~~(B) The fine shall be assessed against the secretary of the association by any court of competent jurisdiction upon complaint of the commissioner.~~

~~(b)(1) The commissioner shall annually file with the Governor a report of the name, officers, directors, domicile, and financial statement of each building and loan association.~~

~~(2) This report shall be published in book form.~~

~~23-38-201. Shares, stock, or certificates generally.~~

~~(a) The bylaws of each association shall describe the several kinds or classes of shares, stock, or certificates which it may issue.~~

~~(b) The board of directors of the associations shall have power and authority to limit or suspend the issuing of any or all classes of shares, stock, or certificates, to fix a maximum limit for the excess payments, above~~

~~the regular dues, which may be paid in any one (1) month on installment shares. The board may also remove the limit or suspension at any time in its discretion.~~

~~23-38-202. Calling in shares.~~

~~(a) Any building and loan association, in its bylaws, may reserve the right and power to require, at any time, any holders of any or all classes of shares, stock, or certificates issued by it, except guaranty permanent shares, to surrender for cancellation and payment any or all of the shares, stock, or certificates held by them, upon notice to do so within a reasonable time stated in the notice.~~

~~(b) Upon surrender, the association shall pay to the owner of the shares, stock, or certificates the full book value thereof, together with the contract or earned interest or dividend thereon, up to the date specified in the notice to surrender.~~

~~(c) The shares, stock, or certificates called for surrender, cancellation, and payment, and not brought in for that purpose, shall cease to draw interest or dividend at the date named for the surrender.~~

~~(d) All shares withdrawn, paid off, or called in and cancelled shall revert to the association and may be reissued as new shares.~~

~~23-38-203. Guaranty associations—Stock, dividends, etc.~~

~~(a) Any association with guaranty permanent capital may issue to its members, or to nonmembers, other classes of investment certificates, or savings certificates or pass books, and shall specify on all of the other classes of certificates or pass books the fixed, definite rate of interest thereon.~~

~~(b) The associations may contract to mature their loans on a definite contract basis without reference to the maturity of shares.~~

~~(c) Associations having guaranty permanent capital, after setting aside from the earnings a sum sufficient to pay, credit, or reserve to all other classes of investment certificates, savings certificates, and pass books the accrued interest or dividend thereon, and those further sums which this act may provide for the contingent reserve fund, and to pay all other past due liabilities, may then distribute the balance of any distributable surplus profits as a dividend to the guaranty permanent shares.~~

~~(d)(1) The amount of guaranty permanent stock authorized to be issued by every guaranty plan association shall be not less than one hundred fifty thousand dollars (\$150,000), of which not less than twenty-five thousand dollars (\$25,000) shall be paid in cash before the association begins operation. The amount of the paid-in guaranty permanent shares shall at all times be not less than five percent (5%) of the total liabilities of the association until the entire authorized guaranty permanent capital has been paid in, and the full amount of one hundred fifty thousand dollars (\$150,000) permanent or guaranty capital shall thereafter be maintained.~~

~~(2) However, associations domiciled in towns of not more than one thousand five hundred (1,500) population and confining their operations to the town and the vicinity within five (5) miles thereof may begin operation with a guaranty capital subscribed and paid in cash of not less than ten thousand dollars (\$10,000).~~

~~23-38-204. Mutual or guaranty permanent stock associations — Dayton or optional payment plan.~~

~~(a) The Dayton or optional payment plan of maturing shares or certificates may be employed by either mutual or guaranty permanent stock associations.~~

~~(b) Members or certificate holders whose shares are on the optional payment plan may make payments thereon in any amount at any time, subject to those limitations which the board of directors may impose under the bylaws of the association.~~

~~(c) The stock may be subject to withdrawal under the bylaws of the association, but the entire number of shares represented by the certificate must be withdrawn at one (1) time. It shall not be permissible to make partial withdrawals under any of the certificates.~~

~~23-38-205. Directors — Stock ownership.~~

~~(a) The bylaws of each building and loan association may prescribe other qualifications for directors, but no person shall be eligible to election as director unless he is a bona fide owner of stock or shares in the association to the amount of:~~

~~(1) Two hundred fifty dollars (\$250) fully paid and free from all liens if the assets of such association do not exceed one hundred~~

~~thousand dollars (\$100,000); and~~

~~(2) Five hundred dollars (\$500) if the assets of the association do exceed one hundred thousand dollars (\$100,000).~~

~~(b) A director shall not have the right to sell or dispose of his stock or to resign or vacate his office as director during the term for which he is elected without the consent and approval of the Securities Commissioner.~~

~~23-38-206. Voting rights, etc., of shareholders and directors.~~

~~The bylaws of each association shall prescribe the voting rights and powers of the owners of the several classes of shares of stock and certificates and the qualifications of the voting shareholders and of the members of the board of directors.~~

~~23-38-207. Members or employees may take acknowledgments.~~

~~No notary public or other public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking the acknowledgment or proof of an instrument in writing in which a building and loan association is interested by reason of his membership or stockholding in, or employment by, the building and loan association interested in the instrument. Any such acknowledgments taken prior to June 11, 1931, are validated.~~

~~23-38-208. Excessive dividends — Suspension of payment.~~

~~(a) If, after examination, the Securities Commissioner shall find that any building and loan association of this state is paying, crediting, or reserving dividends, or is about to pay, credit, or reserve dividends, or is distributing or about to distribute profits, on its stock or certificates in excess of the dividends or profits earned; or that the condition of the assets of the association does not justify the payment, credit, or reservation of dividends or the distribution of profits upon its stock or certificates; or that dividends or profits are being or are about to be paid, credited, reserved, or distributed so as to result in inequities to the stockholders or certificate holder, or any class or portion thereof; or that the safety of the investments in the association are, or are about to be, jeopardized by the payment, credit, reservation, or distribution of dividends~~

~~or profits, then the commissioner shall order the association, in writing, to cease to pay, credit, or reserve dividends, or distribute profits, on any class of its shares or certificates except as and to the extent as may be specified in the order, notice of which order shall be given to the officers of the association.~~

~~(b) From and after the issuance of the order, it shall be unlawful for the association to pay, credit, or reserve any dividends, or distribute any profits, on any of its shares or certificates contrary to the order. Willful violation of the terms of the order shall have the effect of rendering the officers and directors of the association participating in the violation jointly and severally liable for the amount of the dividends or distributions unlawfully paid, credited, reserved, or distributed.~~

~~(c) The order shall remain in full force and effect until the commissioner shall have determined either:~~

~~(1) That the assets and earnings of the association are in a condition and of a value and amount which permits the association to resume dividends or distributions to such extent as the commissioner may authorize; or~~

~~(2) That the association should go into voluntary liquidation or receivership.~~

~~23-38-209. Excessive dividends—Liability of directors.~~

~~Any members of the board of directors of a building and loan association who knowingly vote to declare or who, being secretary or manager or auditor or examiner thereof, willfully declare, or advise the board of directors of the association to declare, a greater dividend than has actually been earned or has been previously accumulated as surplus by the association shall personally refund the dividend and be liable to the corporation for the amount in excess of earned dividends or accumulated surplus jointly and severally.~~

~~23-38-210. Loans and investments generally.~~

~~(a)(1) Loans made by a building and loan association operating under this act shall be made to its members or certificate holders, accompanied by a transfer and pledge of shares or units issued by the association or secured by a mortgage or deed of trust on improved real estate which is unencumbered,~~

~~except for prior liens owned by the association and taxes and assessment liens for improvements not yet due.~~

~~(2) The association shall be empowered to make such other loans as are authorized by the Federal Home Loan Bank or by the Federal Savings and Loan Insurance Corporation [abolished].~~

~~(3) Loans may also be made to members or certificate holders upon pledge, assignment, and delivery to the association, but the loan shall not exceed the withdrawal value of the shares, stock, or certificate so pledged.~~

~~(b)(1) The board of directors of any association may invest funds in the treasury, in excess of the demands of members or certificate holders, in the securities of other Arkansas building and loan associations or in the obligations of the State of Arkansas or of the federal government or in loans to nonmembers on securities which the board of directors may approve. Loans to nonmembers shall not at any time exceed fifteen percent (15%) of the assets of the association.~~

~~(2) The board of directors of any association may invest excess funds in loans and advances of credit insured pursuant to the provisions of Title I of the National Housing Act and the amendments thereto.~~

~~23-38-211. Restrictions as to loans.~~

~~(a) No building and loan association shall make a mortgage loan to an officer, director, or employee of the association, either directly or indirectly, unless the loan is first approved unanimously by the members of the board of directors present at the next regular board meeting, the approval to be recorded by aye and nay vote in the minutes of the meeting of the board.~~

~~(b) No building and loan association shall make loans exceeding, in the aggregate:~~

~~(1) Five thousand dollars (\$5,000) to one (1) borrower upon real estate security if the assets of the association do not exceed fifty thousand dollars (\$50,000);~~

~~(2) Ten thousand dollars (\$10,000) to one (1) borrower upon real estate security if the assets of the association do not exceed two hundred thousand dollars (\$200,000);~~

~~(3) Fifteen thousand dollars (\$15,000) to one (1) borrower upon~~

~~real estate security if the assets of the association do not exceed five hundred thousand dollars (\$500,000);~~

~~(4) Twenty five thousand dollars (\$25,000) to one (1) borrower upon real estate security if the assets of the association do not exceed two million five hundred thousand dollars (\$2,500,000);~~

~~(5) One percent (1%) of the assets of the association to one (1) borrower on real estate security if the assets of the association exceed two million five hundred thousand dollars (\$2,500,000).~~

~~23-38-212. Conveyance of mortgaged property as transfer of shares securing loan.~~

~~The conveyance or transfer of property mortgaged to a building and loan association shall, unless otherwise stated in the instrument of conveyance, act as a transfer also of the shares or certificate of the association securing the loan.~~

~~23-38-213. Investment in real estate.~~

~~(a) Any building and loan association operating under the provisions of this act and having assets in excess of five hundred thousand dollars (\$500,000) may permanently invest a portion of its funds in real estate on which there is, or may be, erected a building suitable to be occupied as offices of the association and for revenue to be derived from rentals of that portion of the building which is not required by the association for its own use. The amount so invested shall not exceed the surplus and reserve of the association.~~

~~(b) The association may also acquire real estate in satisfaction of debts owing to it, previously contracted in the course of its business, or purchased under the foreclosure at sheriff's, judicial, or any other sale, public or private, upon which real estate the association may have or hold a mortgage lien or other interest or encumbrance for the purpose of securing any debts due it or for the protection of its interest in the real estate.~~

~~23-38-214. Valuation of real estate owned as an asset.~~

~~(a) In the event any real estate is acquired by any association through foreclosure, by purchase, or otherwise, the value of the real estate shall immediately be determined by the board of directors, which valuation~~

~~shall in no case exceed the actual cost of the real estate to the association, unless the cost is in excess of the amount of the original mortgage, in which case the value shall be limited to that amount. The valuation, in either case, shall not be increased at any time by the addition of carrying charges.~~

~~(b) If real estate is owned by the association and not occupied in whole or in part by the association as its office within two (2) years after acquisition, there shall be annually charged off, as depreciation, a sum equal to not less than ten percent (10%) of the valuation as prescribed in this section.~~

~~(c)(1) If, at any time, the Securities Commissioner should have reason to believe that real estate carried on the books of any association is in excess of its reasonable market value, then he [or she] is authorized to have an appraisal made of the real estate, at an expense not to exceed five dollars (\$5.00) for each appraisal, to be paid by the association, and to fix the amount at which the real estate is being carried on the books of the association to conform to the appraised value.~~

~~(2) If the board of directors of the association considers that the appraised value does not reflect the fair market value of the property, it has the right to submit additional information as to the value of each and every piece of property which, in its opinion, has been undervalued, with request for reconsideration and review. Upon reconsideration and review of all the information at hand, the value as fixed by the commissioner shall become final.~~

~~23-38-215. Authority to borrow money.~~

~~(a) Building and loan associations of this state shall, subject to the prior approval of the Securities Commissioner in each instance as to the amount of the loan, have the power and authority to borrow money for corporate purposes, to issue negotiable notes therefor, to pledge and endorse and, from time to time, substitute their assets as may be required for the security of the repayment of the borrowed money.~~

~~(b) However, any loan made by any association from the Federal Home Loan Bank, or any successor thereof established under the authority of the United States, may be consummated in full legal effect by the association without obtaining either the prior or subsequent approval of the~~

commissioner.

~~23-38-216. Expenses restricted.~~

~~(a) The expenses of any building and loan association operating in Arkansas shall not, in any fiscal year, exceed the total receipts from membership, withdrawal or cancellation fees, fines, plus two percent (2%) of the average amount of loans outstanding during the year on mortgages, shares, and other securities and investments in securities authorized by this act.~~

~~(b) However, if any building and loan association operating in the State of Arkansas during any fiscal year has reserve funds on hand of more than ten percent (10%) of the association's assets, it may take three percent (3%) of the average amount of loans outstanding during that fiscal year on mortgages, shares, and other securities and investments in securities authorized by this act, in addition to the total receipts from membership, withdrawal, or cancellation fees, or fines, for expenses of operating.~~

~~(c) The term "expenses", as used in this section, shall not be construed to include:~~

~~(1) Taxes, assessments, repairs, or insurance on real estate owned by the association, dividends or interest, or the expenses of foreclosure or other litigation;~~

~~(2) Expenses of appraisals, attorney's fees for examination of title, premiums for title insurance, recording fees, or other expenses which are usually incurred in connection with loaning funds of the association; and~~

~~(3) Premiums paid for the insurance of its shares, cost of examination and audit, or any other expense required by the Securities Commissioner or the Federal Home Loan Bank.~~

~~23-38-217. Losses — Reduction of liability to members.~~

~~(a) Whenever the losses of any building and loan association, resulting from depreciation in value of its securities or otherwise, exceed its contingent reserve fund, undivided profits, and current earnings so that the estimated value of its assets is less than the total amount due its members, the Securities Commissioner shall order a reduction of its liability to its members in a manner which distributes the loss equitably among the members.~~

~~(b) If, thereafter, the association shall realize from the assets a~~

~~greater amount than was fixed in the order of reduction, the excess shall be divided among members whose credits were so reduced, but to the extent of the reduction only.~~

~~23-38-218.—Sale of assets.~~

~~(a) At any regular meeting of the shareholders of any building and loan association, or at any special meeting of the shareholders of the association, in either case called to consider the action and held in accordance with the laws governing the association, the shareholders, by affirmative vote of two-thirds (2/3) of the outstanding shares, may authorize the sale of all or a portion of the assets of the association to another building and loan association or to a federal savings and loan association.~~

~~(b) The sale shall be on terms and under conditions which may be adopted in the shareholders' meeting. Upon authority given the directors of the association in the meeting, they are authorized to proceed to consummate the sale.~~

~~23-38-219.—Subscription for stock in corporation created by an act of Congress.~~

~~Any building and loan association organized under the laws of the State of Arkansas shall have authority to subscribe for stock in any corporation created by an act of Congress when subscription is required by the act of Congress as a condition precedent to the securing of a loan to the building and loan association from any corporation created by the act of Congress.~~

~~23-38-220.—Foreign associations.~~

~~(a) Foreign building and loan associations may be permitted to transact business in the State of Arkansas in the manner provided in this section, and a foreign association which is not admitted according to the provisions of this section shall not transact any business whatever in this state.~~

~~(b)(1) A foreign association applying for permit to do business in the State of Arkansas shall file with the Securities Commissioner a copy of its articles of incorporation, bylaws, plan of operation, and its most recent financial statement.~~

~~(2) It shall deposit with the commissioner one hundred thousand~~

~~dollars (\$100,000) of bonds of the State of Arkansas or of some subdivision thereof, or other evidence of obligations of the State of Arkansas or some subdivision thereof, or certificates of full paid shares in Arkansas building and loan associations, or United States bonds, which securities so filed shall be subject to the approval of the commissioner. However, any foreign corporation authorized to do business in Arkansas on January 1, 1929, shall not be required to deposit the securities required in this subdivision.~~

~~(c) The securities thus filed with the commissioner under the provisions of this section shall be held by him or her in trust for the exclusive benefit and security of the creditors and shareholders of the association who are residents of this state. The interest or income of any securities so deposited shall accrue to and be used by the association depositing them, so long as the association fulfills its obligations and complies with the provisions of this chapter.~~

~~(d) After the articles of incorporation, bylaws, plan of operation, and financial statement shall have been approved, together with the approval of the securities required by the provisions of this section, the commissioner may issue a certificate of authority to do business in the State of Arkansas. The certificates shall be for one (1) year from March 1, and must be renewed annually. A fee of two hundred fifty dollars (\$250) for each certificate of authority and each renewal thereof shall be charged and collected from each foreign association admitted.~~

~~(e) The commissioner may, however, before issuing the certificate of authority, exercise the right of examinations, and the expense and fees for the examination shall be paid by the association applying, regardless of whether the application is granted or denied.~~

~~(f)(1) All securities delivered to the commissioner under the terms of this section shall be deposited with the Treasurer of State, who, with his or her sureties, shall be responsible for the safekeeping thereof. The Treasurer of State shall surrender the securities only upon the written order of the commissioner.~~

~~(2) If the commissioner shall become convinced at any time that any securities held under the terms of this section have suffered depreciation in value, he or she shall require additional securities.~~

~~(3) The commissioner may also, upon request of the owner, permit exchanges of securities upon proper approval of the new securities by the~~

commissioner.

~~(g) Every foreign association admitted to do business in Arkansas shall file with the commissioner an instrument in writing properly executed, agreeing that any summons or other process of any court of competent jurisdiction may issue against it from any county in the State of Arkansas, and when served upon the commissioner shall be accepted by him or her, irrevocably, as a valid service upon the foreign association. However, the commissioner shall send, by registered mail, a copy of the legal process served upon the commissioner to the home office of the foreign association, and the commissioner shall, within six (6) days after service upon him or her, certify to the court from which the summons or process issued the fact of the acceptance of service and mailing.~~

~~(h) No foreign association shall be admitted to do business in this state if it has a name identical with that of any domestic association or with any other foreign association previously admitted or has a name so similar as to cause confusion.~~

~~(i) The provisions of this section shall not apply to any foreign association, a majority of whose directors are residents of the State of Arkansas.~~

~~23-38-301. Voluntary liquidation.~~

~~(a)(1) By action of its shareholders or certificate holders at the annual meeting or at any meeting specially called for the purpose and by vote of two-thirds (2/3) of the holders present in person or by proxy at the meeting, any building and loan association of this state may resolve to liquidate the association and adopt a plan therefor. Each shareholder or certificate holder is entitled to vote, with respect to the question of liquidation, one (1) vote for each twenty-five dollars (\$25.00) of the face value of the number of shares or certificates which he or she owns, whether or not he is entitled to vote his or her shares or certificates respecting other matters.~~

~~(2) In the event that the Securities Commissioner has ordered the association to suspend the payment of dividends or the distribution of profits on its shares or certificates pursuant to § 23-38-208, and in the further event that the commissioner finds and certifies that an emergency exists in the affairs of the association requiring action before the~~

~~shareholders or certificate holders of the association can meet in the annual or special meeting, then the board of directors of the association may resolve voluntarily to liquidate the association and may adopt a plan of liquidation. In instances of action by either shareholders or certificate holders or the board of directors, this plan is subject to modifications or additions, made either prior or subsequent to the approval of the plan by the commissioner, which may from time to time be required by the commissioner and approved by the board of directors of the association.~~

~~(b) Before a resolution providing for liquidation shall take effect, a copy thereof, together with a complete detailed outline of the plan certified by the president and secretary of the association, together with a statement of the assets and liabilities of the association verified by oath of a majority of its board of directors, shall be filed with the commissioner.~~

~~(c)(1) From and after the approval of the resolution and plan, the latter modified or added to as aforesaid, by the commissioner, the association shall not issue any further stock or certificates nor make any further loans, and all of its income and receipts in excess of the actual expenses of liquidation shall first be applied towards the discharge of its liabilities for borrowed money.~~

~~(2) The officers of the association, under the direction of its board of directors and the supervision of the commissioner, shall then proceed with the liquidation by reducing the assets of the association to cash and distributing them among its shareholders and certificate holders in proportion to the withdrawal value of their respective holdings existing at the date of the passage of the resolution for voluntary liquidation.~~

~~(3) The expenses of the liquidation, the sales or compromises of assets of the association in the course of liquidation, and the distribution among the shareholders and certificate holders shall be incurred or had only after the approval in each instance of the commissioner.~~

~~(d) Each director of the association shall hold office until the election and acceptance of office of his successor, and the resignation of any director shall not become effective until the commissioner approves it. In the event of a vacancy upon the board of directors of the association by death or approved resignation, the remaining directors shall fill such vacancy until a director has been regularly elected and accepted his or her position.~~

~~23-38-302. Notice of insolvency or illegal practices.~~

~~(a) If, from any source, it shall come to the knowledge of the Securities Commissioner that the assets of any building and loan association operating in this state have become impaired, and that it is insolvent; or that it is conducting its business in a fraudulent, illegal, or unsafe manner, which will jeopardize the safety of the investments therein; or that the amount of the paid-in guaranty permanent shares of any guaranty association is less than the ratio prescribed in this act to be maintained, as compared with its liabilities to other classes of shares and creditors, it shall be the duty of the commissioner to notify each officer and director of the association of the facts which have come to his or her knowledge.~~

~~(b) In case the assets of a mutual, serial, or Dayton optional payment plan association have become impaired and it is insolvent, the notice shall direct that effective steps be taken to restore the association to solvency, and that the commissioner be notified within a reasonable time, to be stated in the notice, of the action taken to carry out the directions thus given.~~

~~(c) In case the assets of a guaranty association have become impaired and it is insolvent, or if the ratio between the amount paid in on its guaranty permanent shares and its liabilities to all other classes of shares and creditors is less than the ratio prescribed in this act, the notice shall direct that an assessment shall be levied pro rata upon all the guaranty permanent shares at a rate sufficient to make good the impaired assets or correct the impaired ratio and applied for that purpose, or that other effective steps be taken to correct the shortages. The notice shall also direct that the commissioner be notified, within a reasonable time specified in the notice, of what steps have been taken to carry out the directions thus given.~~

~~(d) In case any association is conducting its business in a fraudulent, illegal, or unsafe manner, the notice shall direct that the association discontinue its fraudulent, illegal, and unsafe methods and practices, within a reasonable time which the notice shall specify, and that the commissioner shall be notified within that time as to what steps have been taken to comply with the notice.~~

~~23-38-303. Appointment of receiver or conservator.~~

~~(a)(1) In case any association notified as provided in § 23-38-302 shall fail or neglect to comply with notice thus given within the time stipulated in the notice, or in the event the Securities Commissioner shall be of the opinion that the association is in an insolvent condition, the commissioner is authorized and directed to file a petition in the circuit court in the county where the principal office of the association is situated alleging the insolvency of the association or that the association is conducting its business in a fraudulent, illegal, or unsafe manner and that it has failed to discontinue the fraudulent, illegal, or unsafe practices within a reasonable time after notice from the commissioner.~~

~~(2) If the commissioner, upon investigation, finds that the association has been conducting its affairs in an illegal or fraudulent manner and the illegal or fraudulent practices, in the opinion of the commissioner, have rendered the condition of the association insolvent or if continued would jeopardize the financial condition of the association, the commissioner is vested with authority, without notice to the association, to file a petition in the circuit court setting up the illegal or fraudulent practices and asking for a receiver or conservator for the association.~~

~~(b) In all cases where the commissioner files a petition for a receiver or conservator, he or she shall attach to his or her petition, as soon as practicable after filing, a full and true statement of the affairs and conditions of the association, including an itemized statement of its assets and liabilities.~~

~~(c)(1) After the association has been served with the notice of the filing of the petition, the circuit court, if in session, and if not in session then in vacation, shall hear the petition. Upon finding that the association is insolvent or is conducting its business in a fraudulent, illegal, and unsafe manner, it shall appoint a receiver or conservator to take over all books, papers, records, and effects of every description belonging to the association, or on petition filed in circuit court, signed by five percent (5%), in amount, of the share or certificate holders of the association who shall be required to give opposite each person's name the number and amount of shares or certificates held in the association.~~

~~(2) The circuit court shall not be vested with authority to appoint a receiver or conservator for a building and loan association chartered under the laws of this state except on petition filed by the~~

commissioner.

~~23-38-304. Duties of receiver or conservator generally—Dissolution of association.~~

~~(a) Before entering upon the duties of his or her office, the receiver or conservator shall be required by the court to execute to the association good and sufficient bond, conditioned for the faithful discharge of his duties, which bond shall be approved and filed with the circuit court.~~

~~(b)(1) If a conservator is appointed for the association, the conservator shall take possession of the association in accordance with the terms of the appointment and shall, at that time, give notice of the circuit court's action to any officer or employee in the home office who appears to be in charge of that office.~~

~~(2) On taking possession, the conservator shall immediately take possession of the association's books, records, and assets.~~

~~(3) A conservator shall, without further action, succeed to the rights, titles, powers, and privileges of the association and to the rights, powers, and privileges of its members, officers, and directors. No member, officer, or director shall thereafter have or exercise any such right, power, or privilege or act in connection with any of the association's assets or property.~~

~~(4) The circuit court may at any time, on proper showing by the Securities Commissioner, direct the conservator to turn over the association to its previous management, new management, or receiver.~~

~~(c)(1) If a receiver is appointed, the receiver shall be charged with the collection of all dues, interest, and other charges accruing upon the mortgages, notes, or other claims owing to the association but shall receive no further dues or other payments upon any shares, stock, or certificates issued by the association and shall issue no further shares, stock, or certificates of the association.~~

~~(2) The receiver shall pay, and procure the discharge of, all preferred debts and obligations of the association. After paying the necessary legal expenses of his or her receivership, he or she shall distribute the balance of the assets from time to time under orders from the circuit court pro rata to the liabilities of the association to the holders of its shares, stock, and certificates in proportion to the sums paid in on~~

~~its several outstanding shares, stock, and certificates.~~

~~(3) To facilitate the work of liquidation of the association, the receiver may, and, on orders from the circuit court to do so, shall, negotiate for the sale and transfer of the mortgages and other assets and property of the association to other corporations or persons, subject always to the vested and accrued rights of the mortgagors. Before the sale or transfer is carried out and consummated, a full report of the negotiations and the proposed terms and conditions of the sale and transfer shall be filed with and approved by the circuit court.~~

~~(d) The compensation to be allowed a receiver or conservator under this section shall be an amount reasonable in proportion to the value of the property of the association and shall be fixed by the circuit court. All expenses necessary in carrying out the receivership or conservatorship shall be paid out of the assets of the association as directed by the circuit court.~~

~~(e)(1) Upon completion of the duties entrusted to him or her, the receiver shall prepare a statement to that effect, reciting therein that all the liabilities of the association have been completely discharged as far as its assets will permit and that its assets and property are distributed among all the persons entitled thereto. The statement shall be subscribed and sworn to by the receiver and filed with the circuit court, and a notice of the dissolution shall be published for three (3) successive weeks in a newspaper published in the county where the principal office of the association is located.~~

~~(2) Upon the filing of the statement, making publication of notice as aforesaid, and the approval and confirmation of the statement and report by the circuit court, the association shall be deemed liquidated and dissolved.~~

~~23-38-305. Loans from federal agencies — Authority of receiver.~~

~~(a) The receiver in charge of any insolvent building and loan association, on behalf of that association, may apply for and procure loans from a lending agency of the United States government. The proceeds of those loans may be paid to creditors of the insolvent building and loan association.~~

~~(b) To evidence liability for the repayment of loans, the receiver, as~~

~~eustodian of the insolvent building and loan association, may execute and deliver to the lending agency of the United States Government from whom the loan is procured promissory notes which will constitute the obligation of the building and loan association named therein.~~

~~(c) In order to secure the payment of the notes given as provided in subsection (b) of this section, the receiver may assign, convey, mortgage, pledge, and hypothecate to the lending agency of the United States Government any and all assets of the insolvent building and loan association receiving the loan, which assignment, conveyance, mortgage, pledge, or hypothecation will operate to confer upon the lending agency a first lien upon the assets thus given as collateral.~~

~~(d) To facilitate and effectuate the procurement and consummation of these loans, the receiver may execute and deliver to the lending agency of the United States Government any applications, warranties, statements, information forms, contracts, agreements, and other instruments which may be required by the lending agency.~~

~~(e) The authority to procure loans herein conferred upon the receiver of insolvent building and loan associations includes the authority to renew them from time to time.~~

~~23-38-306. Loans from federal agencies — Court approval.~~

~~(a) The right of the receiver to procure and consummate any loans as provided in § 23-38-305 shall be subject to the approval of the circuit court having jurisdiction over the administration of the affairs of the insolvent building and loan association on behalf of which the loan is sought.~~

~~(b)(1) When, in any instance, the receiver desires to apply for a loan on behalf of an insolvent building and loan association in his or her custody, he or she shall forthwith cause a notice to be published for one (1) insertion in some newspaper published and having a general circulation in the county in which the building and loan association is located or, if no such newspaper is published in the county, in a newspaper published in Little Rock, Arkansas, and having a statewide circulation. This notice shall be upon the following form:~~

~~“NOTICE TO CREDITORS AND STOCKHOLDERS of Building and Loan Association: You are notified that the undersigned Receiver is applying on behalf of the above named insolvent building and loan association for a loan~~

~~from, said loan to be secured by a specific pledge of assets of said building and loan association. On the day of, 20, at the hour of o'clock M., a petition setting forth the terms of said loan will be submitted to the Circuit Court of County, Arkansas, at (here indicate place where petition to be submitted), at which time said Court will be asked to approve and authorize the procurement and consummation of said loan.~~

~~A copy of the petition to be submitted as aforesaid will be filed in the office of the Clerk of said Court at least three (3) days before the submission of said petition.~~

~~Any persons desiring to object to the granting of said petition are required by law to file their exceptions thereto with the above Court on or before the date of hearing above mentioned.~~

~~This day of, 20~~

~~Receiver of Building & Loan Association"~~

~~(2) The date of hearing specified in the notice shall be at least ten (10) days subsequent to the publication of the notice.~~

~~(c)(1) The receiver's petition for authority to procure the loan must be filed in the office of the clerk of the court at least three (3) days before the date set for the presentation of the petition. If, on the date designated in the notice, the petition has not been on file with the clerk of the court for a full three (3) days, the court shall order an adjournment or adjournments which will ensure that the petition lies in the office of the clerk of the court for three (3) days before its presentation.~~

~~(2) The petition to be filed and presented by the receiver as aforesaid shall set forth the terms of the proposed loan and contain the receiver's recommendations.~~

~~(d)(1) If any exceptions to the proposed loan, or the terms of the loan, shall be filed by authorized exceptors at or before the hearing of the petition, the circuit court shall dispose of them as promptly as possible, making any orders in respect thereto which it deems proper.~~

~~(2) If no written exceptions are filed on or before the hearing, the court shall pass upon the petition without delay and shall approve it if, in the opinion of the court, approval is deemed proper.~~

~~(e) An order of approval shall be subject to appeal, which must be~~

~~taken in twenty (20) days, by any persons who may have filed written exceptions on or prior to the hearing, but the order shall not be subject to appeal or review on the prayer of any person who did not file written exceptions to the petition on or before the hearing.~~

~~(f) In exercising its jurisdiction, the circuit court may hear petitions and make orders in vacation as well as in term time.~~

~~(g) All presumptions usually indulged in favor of the judgments of courts of superior jurisdiction shall be indulged in favor of the validity of a judgment approving a loan application under this section.~~

~~(h) All appeals under this section will be advanced as a matter of public interest.~~

~~23-38-307. Repayment of loans during liquidation.~~

~~(a) Any borrower from a domestic building and loan association, which is in voluntary or involuntary liquidation, or which has been legally declared insolvent, who, at the time of the liquidation or insolvency, is indebted to the association, shall be charged with the amount due on the loan or advance and with any other indebtedness due the association by the borrower at the time of liquidation or insolvency.~~

~~(b) The borrower shall be given credit on his or her loan or advance for the amount theretofore paid on his or her stock, bond, investment certificate, membership certificate, or other evidence of shares, as the case may be, less any fees, fines, or penalties due the association by the borrower.~~

~~23-38-401. Embezzlement, unauthorized acts, etc.~~

~~(a) Every officer, director, member of any committee, clerk, or agent of any building and loan association doing business in this state who commits the following acts with intent to deceive, injure, or defraud the association or any association member or for the purpose of inducing any person to become a member thereof or to deceive anyone appointed to examine the affairs of the association shall be deemed guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a period of not less than one (1) year nor more than ten (10) years:~~

~~(1) Embezzles, abstracts, or misapplies any of the moneys, funds, or credits of the association;~~

~~(2) Issues or puts into circulation any stock or certificates or other orders without proper authority;~~

~~(3) Issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or any other written instrument belonging to the association; or~~

~~(4) Certifies to or makes a false entry in any book, report, or statement of or to the association.~~

~~(b) Whoever, with intent to deceive, injure, or defraud a building and loan association, aids or abets any officer, member of any committee, or other person in committing any of the prohibited acts enumerated herein shall be deemed guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a period of not less than one (1) year nor more than ten (10) years.~~

~~23-38-402. Publication of false advertisement or report of financial condition.~~

~~Every director, officer, or agent of any building and loan association doing business in this state who knowingly concurs in making, publishing, circulating, or posting, either generally or privately to the stockholders or others, any advertisement, sign, written report, exhibit, statement of its affairs or financial condition, written or verbal; any book or notice containing any material statement that is false; or any untrue or fraudulently exaggerated reports, prospectus, account, statement of operations, values, business, profits, expenditures, or prospectus of any other property or documents intended to produce or give the shares of stock in the association a greater value or a less apparent or market value than they really possess or that misrepresents in any way the powers or liabilities of the association shall be guilty of a violation and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500).~~

~~23-38-403. Suppressing evidence.~~

~~Every officer, director, employee, or agent of any building and loan association who, for the purpose of concealing any fact or suppressing any evidence against himself or herself or against any other person, abstracts, removes, mutilates, destroys, or secretes any paper, book, or record of any~~

~~building and loan association or of the Securities Commissioner shall be guilty of a Class D felony.~~

~~23-38-404. Circulation of false statements injurious to association.~~

~~Any person who shall knowingly make, utter, or circulate any statement untrue in fact and derogatory to the financial condition of any building and loan association in this state with the purpose to injure the association shall be guilty of a violation and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500).~~

SECTION 5. Arkansas Code § 26-26-1502(4), concerning definitions of corporations and financial institutions, is amended to read as follows:

(4) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., ~~or § 23-37-706 and § 23-38-201 et seq.~~, or under any other appropriate state or federal law; and

SECTION 6. Arkansas Code § 26-50-101(a)(4), concerning definitions of state taxes, is amended to read as follows:

(4) "Savings and loan association" or "building and loan association" means any financial institution or association established and operating under the authority of § 23-37-101 et seq., ~~or § 23-37-706 and § 23-38-101 et seq.~~, or under any other appropriate state or federal law; and

SECTION 7. DO NOT CODIFY. The enactment and adoption of this act shall not repeal, expressly or impliedly, the acts passed at the regular session of the Eighty-Ninth General Assembly. All such acts shall have full force and effect, and so far as those acts intentionally vary from or conflict with any provision contained in this act, those acts shall have the effect of subsequent acts amending or repealing the appropriate parts of the Arkansas Code of 1987.