

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

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/21/13
A Bill

HOUSE BILL 2047

By: Representative McCrary

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; TO ALLOW FOR THE CREATION OF THE ARKANSAS CREDIT RESERVE PROGRAM; TO ALLOW FOR ALTERNATIVE METHODS OF PAYING FEES UNDER THE ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL BUSINESS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAWS CONCERNING THE ARKANSAS DEVELOPMENT FINANCE AUTHORITY; TO CREATE THE ARKANSAS CREDIT RESERVE PROGRAM; TO ALLOW ALTERNATIVE METHODS OF PAYING FEES UNDER THE ARKANSAS CAPITAL ACCESS PROGRAM FOR SMALL BUSINESS.

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

SECTION 1. Arkansas Code §§ 15-5-1103 and 15-5-1104 are amended to read as follows:

15-5-1103. Definitions.

As used in this subchapter:

~~(1) "Authority" means the Arkansas Development Finance Authority;~~

~~(2)~~ (1) "Financial institution" means all banks, savings and loan associations, corporations organized ~~pursuant to~~ under either the Arkansas Development Finance Corporation Act, § 15-4-901 et seq., or the County and Regional Industrial Development Company Act, § 15-4-1201 et seq., and any



other lending institutions approved by the ~~board~~ Board of Directors of the Arkansas Development Finance Authority;

~~(3)~~(2) "Loss reserve account" means an account in ~~any a~~ any a financial institution ~~which~~ that is established and maintained by the ~~authority~~ Arkansas Development Finance Authority for the benefit of a financial institution participating in the ~~program~~ Arkansas Capital Access Program for Small Business or the Arkansas Credit Reserve Program;

~~(4)~~ "Program" means the Arkansas Capital Access Program for Small Business;

~~(5)~~(3) "Qualified business" means ~~any a~~ any a person conducting business for profit or not-for-profit who is authorized to conduct business in the State of Arkansas; and

~~(6)~~(4) "Qualified loan" means a loan or portion of a loan made by a financial institution to a qualified business for any business activity that has its primary economic effect in Arkansas; ~~and.~~

~~(7)~~ "State" means the State of Arkansas.

15-5-1104. Contracts with financial institutions ~~for capital access~~ - Contents of contract.

(a) The Arkansas Development Finance Authority may contract with ~~any a~~ any a financial institution for the purpose of allowing the financial institution to participate in the Arkansas Capital Access Program for Small Business or the Arkansas Credit Reserve Program.

(b) A contract between the authority and a financial institution under this section shall provide:

(1) For the creation of a loss reserve account by the authority for the benefit of the financial institution;

(2) That the financial institution, a qualified business, and the authority will deposit moneys to the credit of the financial institution's loss reserve account when the financial institution makes a qualified loan to the qualified business;

(3) That the authority will pay moneys in the loss reserve account, not exceeding an amount equal to the total amount credited to the loss reserve account, to the financial institution to reimburse the financial institution for any financial loss incurred as a result of any qualified loan made under the ~~program~~ Arkansas Capital Access Program for Small Business or

the Arkansas Credit Reserve Program;

(4) That the liability of the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the financial institution; and

(5) For such other terms as the authority may require.

SECTION 2. Arkansas Code §§ 15-5-1107 through 15-5-1110 are amended to read as follows:

15-5-1107. Enrollment of qualified loan ~~in program~~ – Procedure – Fee – Transfers to loss reserve account.

(a)(1) When a financial institution participates in the Arkansas Capital Access Program for Small Business or the Arkansas Credit Reserve Program, if the financial institution decides to enroll a qualified loan under the ~~program in order~~ Arkansas Capital Access Program for Small Business or the Arkansas Credit Reserve Program to obtain the protection against loss provided by its loss reserve account, the financial institution shall notify the Arkansas Development Finance Authority of the qualified loan within ten (10) days after the qualified loan is made.

(2) The notification required under subdivision (a)(1) of this section shall be in writing on a form prescribed by the authority.

(b)(1) When making a qualified loan that will be enrolled under the ~~program~~ Arkansas Capital Access Program for Small Business, the financial institution shall require the qualified business to which the qualified loan is made to pay a fee of not less than one and one-half percent (1.5%) of the principal amount of the qualified loan but not more than three and one-half percent (3.5%) of the principal amount.

(2) When making a qualified loan that will be enrolled under the Arkansas Credit Reserve Program, the financial institution shall require the qualified business to which the qualified loan is made to pay a fee of not less than one percent (1%) of the principal amount of the qualified loan.

~~(2)(A)(3)(A)~~ The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower.

(B) However, the financial institution may collect the amount of its fee from the qualified borrower.

(4) The authority and the financial institution shall allow a qualified business to pay the fees required under this subsection using

sources other than sources of the qualified business.

~~(3)~~(5) The financial institution shall deliver the fees collected under this subsection to the authority for deposit ~~in~~ into the loss reserve account for the financial institution.

(c) When depositing fees collected under subsection (b) of this section to the credit of the loss reserve account for a financial institution, the authority shall transfer an amount that is not less than the total amount of the fees paid by the borrower and the financial institution from the Capital Access Fund to the loss reserve account for the financial institution.

15-5-1108. Claims for reimbursement of losses – Amounts subject to reimbursement.

(a) The Arkansas Development Finance Authority shall establish procedures under which financial institutions participating in the Arkansas Capital Access Program for Small Business or the Arkansas Credit Reserve Program may submit claims for reimbursement for losses incurred as a result of qualified loan defaults.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include qualified loan principal, accrued interest on the principal, actual and necessary costs of seeking recovery of the principal amount and accrued interest ~~thereon~~ on the principal, and any other related costs.

(c)(1) A financial institution may seek reimbursement of qualified loan losses ~~prior to~~ before the liquidation of collateral from defaulted qualified loans.

(2) The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted qualified loan.

15-5-1109. Rules.

The Arkansas Development Finance Authority may adopt such rules as it considers necessary to carry out its duties, functions, and powers relating to the Arkansas Capital Access Program for Small Business and the Arkansas Credit Reserve Program.

15-5-1110. Financial report of Capital Access Fund.

(a) At least ~~semiannually every calendar year~~ annually, the Arkansas Development Finance Authority shall prepare a report conforming to generally accepted accounting principles that describes the financial condition of the Capital Access Fund and describes the results and economic impact of the Arkansas Capital Access Program for Small Business and the Arkansas Credit Reserve Program.

(b) The reports required under this section shall be submitted to the Governor and to the Legislative Council.

SECTION 3. Arkansas Code Title 15, Chapter 5, Subchapter 11, is amended to add an additional section to read as follows:

15-5-1111. Arkansas Credit Reserve Program.

The Arkansas Development Finance Authority shall establish the Arkansas Credit Reserve Program within the Arkansas Capital Access Program for Small Business.

/s/McCrary