

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

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 422

By: Senator Rapert
By: Representative Collins

For An Act To Be Entitled

AN ACT TO AMEND CERTAIN PROVISIONS OF THE ARKANSAS BANKING CODE OF 1997; TO ALLOW THE REPURCHASE OF SHARES UNDER CERTAIN CONDITIONS BY CERTAIN STATE BANKS AND BANK HOLDING COMPANIES; TO AUTHORIZE THE REQUIREMENT OF A GREATER VOTE OF SHARES THAN A SIMPLE MAJORITY TO AMEND THE ARTICLES OF INCORPORATION OF A STATE BANK WHEN PROVIDED; TO EXEMPT THE SHAREHOLDERS OF CERTAIN STATE BANKS FROM POSSIBLE ASSESSMENT OF THEIR SHARES OF STOCK; TO PROVIDE FOR THE ISSUANCE AND SALE OF AUTHORIZED PREFERRED STOCK BY A STATE BANK UPON APPROVAL OF ITS BOARD OF DIRECTORS AND THE BANK COMMISSIONER; TO AUTHORIZE THE ISSUANCE OF SUBORDINATED INDEBTEDNESS BY STATE BANKS UPON APPROVAL OF THE BANK COMMISSIONER; TO ELIMINATE THE REQUIREMENT FOR CERTAIN STATE BANKS AND ARKANSAS BANK HOLDING COMPANIES TO FILE PERIODIC REPORTS WITH THE BANK COMMISSIONER OF THE TRANSFER OF STOCK; TO ALLOW STATE BANKS CHARTERED ON OR BEFORE MAY 30, 1997, TO ELECT TO ELIMINATE CUMULATIVE VOTING IN THE ELECTION OF DIRECTORS; TO PROVIDE FOR MERGERS OF BANK HOLDING COMPANIES INTO STATE BANKS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND CERTAIN PROVISIONS OF THE ARKANSAS BANKING CODE OF 1997; AND TO DECLARE AN EMERGENCY.



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

SECTION 1. Arkansas Code § 23-47-102(c), concerning the sale and purchase of stock of a state bank, is amended to read as follows:

(c) ~~The provisions of this~~ This section shall does not apply to:

(1) ~~the~~ The payment by a state bank of the value of shares held by shareholders dissenting from any proposed merger, consolidation, purchase or assumption, or other reorganization involving a plan of exchange of any of the stock of the state bank, who perfect their statutory rights as dissenting shareholders; or

(2) The repurchase by a state bank of its shares of capital stock if the state bank is required to file reports under § 13 or § 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, or has a class of equity securities registered under § 12(b) or § 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, when the terms of the repurchase, or any repurchase plan or program, has been approved by the Bank Commissioner.

SECTION 2. Arkansas Code § 23-48-307(c), concerning filing of amendments to articles of incorporation of a state bank, is amended to read as follows:

(c) ~~An~~ Except as provided in § 23-48-313(a)(1)(C), unless a greater percentage of votes is required in the articles of incorporation for an amendment of any provision of the articles of incorporation, an amendment to the articles of incorporation may be adopted on the affirmative vote of the owners of a simple majority of each class of stock entitled to vote on the proposed amendment.

SECTION 3. Arkansas Code § 23-48-308, concerning filing of amendments to articles of incorporation of a state bank, is amended to add an additional subsection to read as follows:

(f) This section does not apply to the issuance of preferred stock when the issuance is authorized and issued by a state bank when approved by the commissioner and otherwise in compliance with § 23-48-313(a)(1)(C).

SECTION 4. Arkansas Code § 23-48-311(e), concerning the increase or decrease of capital stock of a state bank, is amended to read as follows:

(e) ~~No~~ Except as otherwise permitted under § 23-47-102(c), a decrease of the capital stock shall not be permitted without the consent of the Bank Commissioner and in no event shall the capital be reduced to a figure below the minimum prescribed by law.

SECTION 5. Arkansas Code § 23-48-312, concerning liability of shareholders of a state bank, is amended to add an additional subsection to read as follows:

(e) Subdivision (b)(2) of this section and subsection (c) of this section do not apply to a state bank if the state bank:

(1) Is required to file reports under § 13 or § 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017; or

(2) Has a class of equity securities registered under § 12(b) or § 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017.

SECTION 6. Arkansas Code § 23-48-313(a)(1), concerning classes of stock of a state bank, is amended to add an additional subdivision to read as follows:

(C)(i) If provided in the articles of incorporation of a state bank, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits stated in § 4-27-601, of:

(a) Any class of shares before any shares of that class are issued; or

(b) One (1) or more series within a class before any shares of that series are issued.

(ii) Each series of a class shall be given a distinguishing designation.

(iii) All shares of a series shall have preferences, limitations, and relative rights that are identical with those of other shares of the same series and, except to the extent otherwise provided in the

description of the series, with those of other series of the same class.

(iv)(a) Before issuing any shares of a class or series created under this section, the state bank shall deliver to the Bank Commissioner for filing the articles of amendment that are effective without shareholder action and provide a copy of the resolutions adopted by the board of directors approving the amendment.

(b) The articles of amendment shall include:

(1) The name of the state bank;

(2) A statement that the number of shares to be issued under this section are within the number of shares authorized to be issued under the articles of incorporation of the state bank;

(3) The text of the amendment determining the terms of the class or series of shares;

(4) The date of adoption of the amendment; and

(5) A statement that the amendment was adopted by the board of directors.

SECTION 7. Arkansas Code § 23-48-315 is amended to read as follows:

23-48-315. Issuance and sale of capital notes and other subordinated indebtedness.

(a)(1) ~~Any~~ With the written consent of the Bank Commissioner, a state bank may, through action of its board of directors and without requiring any action by stockholders, with the written consent of the Bank Commissioner, issue and sell its capital notes or other subordinated indebtedness at:

(A) ~~not~~ Not less than par; or

(B) Par, less a customary discount if sold through a broker-dealer registered under § 15 of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017, or exempt from such registration pursuant to the Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

(2) The capital notes or other subordinated indebtedness may be sold for cash or, with the written consent and approval of the commissioner, for property.

(b)(1) The capital notes or other subordinated indebtedness shall be

in such denominations, and the holders thereof shall be entitled to such annual return thereon, as the commissioner may approve.

(2) The capital notes or other subordinated indebtedness shall provide that they may be retired at such time or times and in such manner as may be fixed by the board of directors of the state bank but in no event later than twenty (20) years, in the case of capital notes, or thirty (30) years, in the case of other subordinated indebtedness, after the date of their issuance.

(3) The aggregate par value of the capital notes or other subordinated indebtedness shall not exceed one-half ($\frac{1}{2}$) of the capital base of the issuing state bank, or such lesser proportion of the capital base as may be determined by rule or order of the commissioner.

(4)(A) The state bank, in connection with the issue, subscription, or sale of capital notes or other subordinated indebtedness, may confer upon the holder of each capital note or other subordinated indebtedness the right to convert the ~~note~~ obligation into shares of the common stock of the state bank on such terms as are set forth in the instrument evidencing the conversion rights. The terms may include any agreements not repugnant to law for the protection of the conversion rights, including, ~~but without limiting,~~ without limitation the generality of such authority:

- (i) Restrictions upon the authorization or issuance of additional shares;
- (ii) Provisions for the adjustment of the conversion price or ratio;
- (iii) Provisions concerning rights in the event of reorganization, merger, consolidation, or sale or other disposition of all, or substantially all, of the assets of the ~~corporation~~ state bank; and
- (iv) Provisions for the reservation of authorized but unissued shares to satisfy the conversion rights.

(B) If the shares into which the obligations are convertible would be subject to preemptive rights if issued for cash, the conferring of the conversion rights must be authorized at a stockholders' meeting on a vote of at least a majority of the shares of the issued and outstanding capital stock of the state bank. The vote shall release the preemptive rights to the shares required to satisfy such conversion rights.

(c)(1) Capital notes or other subordinated indebtedness shall at the time of their issuance be, and shall at all times thereafter remain, subordinate in rank and subject to the prior payment of all types of deposits of the state bank.

(2) The state bank may, for the security and protection of the holders of the capital notes or other subordinated indebtedness, agree upon such restrictions on the distribution or payment of dividends on its capital stock as the board of directors may decide.

(d)(1) Capital notes or other subordinated indebtedness and accrued return thereon may be retired at any time, in whole or in part, with the written approval of the commissioner, unless otherwise provided in the capital notes or other subordinated indebtedness, as applicable.

(2) In any case in which capital notes or other subordinated indebtedness issued under the provisions of this section are callable in a period less than ~~twenty (20)~~ thirty (30) years after their issuance, the state bank issuing the capital notes or other subordinated indebtedness may, by a provision inserted therein to that effect, reserve the right, from time to time, to extend the time for the retirement or redemption of the capital notes or other subordinated indebtedness. In that event, the state bank issuing the capital notes or subordinated indebtedness may, by vote of a majority of its board of directors, with the consent of the commissioner, make the extension.

SECTION 8. Arkansas Code § 23-48-316(b)(3), concerning reporting of transfers of stock of a state bank or an Arkansas bank holding company, is amended to read as follows:

(3) ~~If an Arkansas bank holding company is a reporting company under § 13 or § 15(d) of the federal Securities and Exchange Act, then the Arkansas bank holding company may satisfy the reporting requirements under this section by reporting transfers one (1) time per year at the time and in the manner required by the commissioner~~ This subsection does not apply to a state bank or Arkansas bank holding company that:

(A) Is required to file reports under § 13 or § 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017; or

(B) Has a class of equity securities registered under §

12(b) or § 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., as it existed on January 1, 2017.

SECTION 9. Arkansas Code § 23-48-320(d), concerning shareholder voting, is amended to read as follows:

(d)(1) For a state bank chartered on or before May 30, 1997, the shareholders of the state bank shall have cumulative voting privileges in the election of directors unless the articles of incorporation of the state bank otherwise provide.

(2) For all a state banks bank chartered after May 30, 1997, there shall be no cumulative voting privilege unless the state bank's articles of incorporation so provide.

SECTION 10. Arkansas Code § 23-48-503(a), concerning mergers of certain banks or savings and loan associations into a state bank, is amended to read as follows:

(a)(1)(A) With the approval of the Bank Commissioner and the State Banking Board and after a public hearing as prescribed by the applicable law of this state, any bank, ~~including an out-of-state bank upon compliance with § 23-48-901 et seq.~~ bank holding company, or savings and loan association, including an out-of-state bank, bank holding company, or savings and loan association, may be merged with a state bank creating one (1) or more resulting banks.

(B) However, if any national bank, out-of-state bank, bank holding company, or savings and loan association is involved in the merger under subdivision (a)(1)(A) of this section, there shall be compliance with the requirements of the state or federal laws applicable to the national bank, out-of-state bank, bank holding company, or savings and loan association.

(2)(A) A plan of merger involving a state bank shall provide:

- (i) The name of each party to the merger;
- (ii) The name of each entity that will result from the merger; and
- (iii) The terms and conditions of the merger.

(B) If more than one (1) bank, out-of-state bank, or savings and loan association will result or be created by the terms of the

plan of merger, the terms and conditions of the merger shall include:

(i) The manner and basis of allocating and vesting the assets from the merger among one (1) or more of the parties;

(ii) The name of the party that will be obligated to pay the fair value of any shares of stock of a bank that is a party to the merger that are held by a ~~stockholder~~ shareholder that has complied with the requirements of § 23-48-506 for the recovery of the fair value of the ~~stockholder's~~ shareholder's shares; and

(iii) Either of the following:

(a) The manner and basis of allocating the liabilities and obligations of each bank, out-of-state bank, bank holding company, or savings and loan association that is a party to the merger among one (1) or more of the parties; or

(b) Adequate provision for the payment and discharge of the liabilities and obligations of each bank, out-of-state bank, bank holding company, or savings and loan association that is a party to the merger among one (1) or more of the parties.

(3) A bank, including an out-of-state bank, a bank holding company, or a savings and loan association may merge into a state bank if none of the Arkansas banks that are parties to the merger ~~has~~ have a de novo charter.

(4)(A) The applicant shall file an application with the commissioner containing the information that the commissioner requires.

(B) If an out-of-state bank is a party to the merger, all applicable provisions of § 23-48-901 et seq. and the applicable law of the home state of the merging bank shall be satisfied.

(5)(A) ~~The~~ Unless otherwise provided for by the charter or governing law of any out-of-state bank, bank holding company, or savings and loan association, the assenting vote of a simple majority of each class of voting stock of the merging banks, bank holding companies, or savings and loan associations and resulting bank shall be required for the merger.

(B) However, a vote of the shareholders of the resulting bank shall not be required if the number of shares to be issued in connection with the merger does not exceed twenty percent (20%) of the outstanding shares of the resulting bank before the merger.

SECTION 11. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the efficient operation of state banks and bank holding companies doing business in Arkansas is a critical need for Arkansas and the banking and financial institutions industry operating under state law; that the Arkansas Banking Code of 1997 does not currently allow a state bank in Arkansas to pursue efficient operations and regulatory cost savings under state law through a merger transaction with a wholly owned subsidiary bank of an Arkansas bank holding company that results in the subsidiary bank as the surviving entity of the merger transaction; and that this act is immediately necessary because it is critical that the provisions of this act become effective as soon as possible to encourage efficiency and regulatory costs savings to banks and financial institutions operating in Arkansas. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.