

State of Arkansas
94th General Assembly
Regular Session, 2023

A Bill

SENATE BILL 418

By: Senator J. Dismang
By: Representative Maddox

For An Act To Be Entitled

AN ACT TO TRANSFER THE ADMINISTRATIVE FUNCTIONS OF THE STATE SECURITIES DEPARTMENT TO THE STATE BANK DEPARTMENT; TO AMEND THE LAW CONCERNING THE ORGANIZATION OF THE STATE SECURITIES DEPARTMENT; AND FOR OTHER PURPOSES.

Subtitle

TO TRANSFER THE ADMINISTRATIVE FUNCTIONS OF THE STATE SECURITIES DEPARTMENT TO THE STATE BANK DEPARTMENT; AND TO AMEND THE LAW CONCERNING THE ORGANIZATION OF THE STATE SECURITIES DEPARTMENT.

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

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

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

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

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



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

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licensing, or standards of the State Securities Department shall continue to be in effect until they are amended or repealed under authority given by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. Arkansas Code § 23-35-201 is amended to read as follows:

23-35-201. Credit Union Division – State Credit Union Supervisor – Staff.

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

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

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

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

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

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

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

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

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

(B) Report to the Bank Commissioner.

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

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

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