# Ohio Legislative Service Commission

## Bill Analysis

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# S.B. 317

131st General Assembly
(As Introduced)

**Sens.** Hughes and Coley, Eklund, Beagle, Gardner, Bacon, Patton, Hackett

## BILL SUMMARY

- Enacts a new Banking Law governing banks, savings and loan associations, and savings banks under the same statute.
- Provides for a single "bank" charter under which all three types of financial institutions may operate.
- Eliminates the separate laws regulating savings and loan associations and savings banks.
- Makes numerous conforming changes throughout the Revised Code.
- Specifies that the bill's provisions take effect July 1, 2017.

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## CONTENT AND OPERATION

### Overview

The bill enacts a new Banking Law that regulates banks, savings and loan associations, and savings banks under the same statute. That statue is a modification of the law governing banks (R.C. Chapters 1101. to 1127. and 1181.). The definition of "bank" is expanded to include savings and loan associations and savings banks, and a single "bank" charter is created under which all of the financial institutions may operate. The separate statutes regulating savings and loan associations (R.C. Chapters 1151. to 1157.) and savings banks (R.C. Chapters 1161. to 1165.) are repealed by the bill.

Because, unlike banks, the ownership structure of a savings and loan association or savings bank may *not* be represented by shares of stock, the bill enacts new provisions in the Banking Law to specifically address these mutually owned institutions. For mutual institutions, the depositors are voting members and have an ownership interest in the institution. And an institution's code of regulations may provide that all borrowers from the institution are members.[1] As such, some of the bill's provisions expressly apply to "stock state banks" and their "shareholders," while others apply to "mutual state banks" and their "members."[2] In those provisions applicable to both types of state banks, a reference to "or members" is added wherever "shareholders"

[1] R.C. 1114.08.

[2] See, for example, R.C. 1115.11 and 1115.27.

are addressed.[3] Additionally, the bill adds language to recognize that stock state banks have "paid-in capital and surplus," while mutual state banks have "retained earnings."[4]

The bill modifies a number of provisions of existing law to make them expressly applicable only to *state* banks.[5] Many of those provisions are noted in this analysis, but, due to the extensive nature of the bill's changes, a complete list is not included.

Among other changes made in the Banking Law, the bill:

- Acknowledges electronic banking;
- References provisions of the General Corporation Law (R.C. Chapter 1701.) that are applicable to the operation of banks;
- Requires the Superintendent of Financial Institutions' *pre*-approval of amendments to a bank's articles of incorporation or amended articles of incorporation;
- Expands what is deemed privileged and confidential to include information obtained as a result of the *supervision* of a bank;
- Provides for a capital restoration plan in the event a bank is undercapitalized;
- Eliminates the law governing Societies for Savings (R.C. Chapter 1133.).

In recognition of the repeal of the laws governing savings and loan associations and savings banks the bill also makes numerous conforming changes throughout the Revised Code.

The new Banking Law is scheduled to take effect July 1, 2017.[6]

## Organization of the analysis

This analysis provides a chapter by chapter discussion of the new Banking Law. For each chapter, the analysis summarizes the *major substantive changes* being proposed by the bill in the order in which they are found in that chapter. If any section of the

[3] See, for example, R.C. 1101.02(B) and 1105.01.

[4] See, for example, R.C. 1109.33 and 1125.18.

[5] See, for example, R.C. 1105.04 and 1109.15.

[6] Section 4.

existing law regulating banks (R.C. Chapters 1101. to 1127. and 1181.) remains unchanged, it is not included in the bill and, therefore, not mentioned in this analysis.

Following that is a discussion of other related changes made by the bill, including updates, corrections, and conforming changes. The analysis concludes with a chart indicating the sections of current law that have been renumbered and where they are located in the new Banking Law.

## The bill

## Chapter 1101. – General Provisions

### Definitions added or modified by the bill

"**Bank**" or "**banking corporation**" means an entity that solicits, receives, or accepts money or its equivalent for deposit as a business, and includes (1) a state bank or (2) any entity doing business as a bank, savings bank, or savings association under authority granted by the Office of the Comptroller of the Currency or the former Office of Thrift Supervision, the appropriate bank regulatory authority of another state, or the appropriate bank regulatory authority of another country. "Bank" or "banking corporation" does not include a credit union.[7]

"**Bank holding company**" has the same meaning as in the federal Bank Holding Company Act of 1956.[8]

"**Code of regulations**" includes a constitution adopted by a state bank for similar purposes.[9]

"**Deposit**" has the same meaning as in 12 Code of Federal Regulations (C.F.R.) 204.2.[10]

"**Entity**" has the same meaning as in the General Corporation Law.[11]

"**Mutual holding company**" means (1) a mutual state bank or an affiliate of a mutual state bank reorganized in accordance with the bill to hold all or part of the shares of the capital stock of a subsidiary state bank or (2) a mutual holding company

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[7] R.C. 1101.01(B).

[8] R.C. 1101.01(C).

[9] R.C. 1101.01(G).

[10] R.C. 1101.01(J).

[11] R.C. 1101.01(K), referring to R.C. 1707.01, not in the bill.

organized in accordance with 12 United States Code (U.S.C.) 1467a(o) that has converted to a mutual holding company under the bill.[12]

"**Mutual state bank**" means a state bank the earnings and net worth of which inure to the ultimate benefit of its members, unless otherwise provided by law.[13]

"**Person**" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, limited liability company, corporation, or any similar entity or organization.[14]

"**Savings and loan holding company**" has the same meaning as in 12 U.S.C. 1467a.[15]

"**Savings association**" means a savings and loan association doing business under authority granted by the regulatory authority of another state or a federal savings association. The term also includes a state bank that, in accordance with the bill, elects to operate as a savings and loan association.[16]

"**Savings bank**" means a savings bank doing business under authority granted by the regulatory authority of another state.[17]

"**Shares**" means any equity interest, including a limited partnership interest and any other equity interest in which liability is limited to the amount of the investment. The term does not include a general partnership interest or any other interest involving general liability.[18]

"**State bank**" means a bank doing business under authority granted by the Superintendent of Financial Institutions.[19]

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[12] R.C. 1101.01(M).

[13] R.C. 1101.01(N).

[14] R.C. 1101.01(R).

[15] R.C. 1101.01(T).

[16] R.C. 1101.01(U). See also R.C. 1109.021.

[17] R.C. 1101.01(V).

[18] R.C. 1101.01(W).

[19] R.C. 1101.01(X).

"**Stock state bank**" means a state bank that has an ownership structure represented by shares of stock.[20]

"**Trust company**" means an entity licensed under Ohio law to engage in trust business in Ohio or a person that is required to be an entity licensed under Ohio law to engage in trust business in Ohio.[21]

### Purposes of the Banking Law

Expanding the purposes set forth in current law for the enactment of the laws regulating banks, the bill adds the purpose of providing "state banks with competitive parity with other types of financial institutions doing business in this state."[22]

### Transition

The bill states that both of the following apply to every savings bank and savings and loan association that is organized under Ohio law and is in existence as of July 1, 2017 (the date the bill takes effect):

(1) The powers, privileges, duties, and restrictions conferred and imposed in the charter or act of incorporation of such an institution are modified so that each charter or act of incorporation conforms to the new Banking Law.

(2) Notwithstanding any contrary provision in its charter or act of incorporation, every such institution possesses the powers, rights, and privileges and is subject to the duties, restrictions, and liabilities conferred and imposed by the new Banking Law.[23]

Additionally, the bill permits any state bank that wishes to become or remain an affiliate of a savings and loan holding company to do so by complying with the applicable procedures set forth in the bill.[24]

### Enforceability

The bill provides that, except as otherwise expressly provided, the new Banking Law (1) is enforceable only by the Superintendent, the Superintendent's designee, or, with respect to the laws governing crimes and prohibited activities (R.C. Chapter 1127.),

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[20] R.C. 1101.01(Y).

[21] R.C. 1101.01(BB).

[22] R.C. 1101.02.

[23] R.C. 1101.03(E).

[24] R.C. 1101.03(F) and 1109.021.

a prosecuting attorney, and (2) do not create or provide a private right of action or defense for or on behalf of any party other than the Superintendent of Financial Institutions or the Superintendent's designee.[25]

### Designation or name of business

Under current law, only a bank doing business under authority granted by the Superintendent, the bank chartering authority of another state, the Office of the Comptroller of the Currency, or the bank chartering authority of a foreign county can:

(1) Use "bank," "banker," or "banking" in a designation or name under which the bank conducts business in Ohio; or

(2) Represent itself as a bank.

The bill amends (1), above, to allow the use of the words "savings association," "savings and loan," "building and loan," or "savings bank" in a designation or name.[26]

Current law also prohibits a bank from using "state" as part of a designation or name unless it is doing business under authority granted by the Superintendent or the bank chartering authority of another state. The bill extends that prohibition to trust companies.[27]

### Authority to accept deposits or transact banking business in Ohio

Current law prohibits a "depository institution outside this state" from establishing a deposit account with or for a person in Ohio by means of an ATM or other money transmission device in Ohio. The bill (1) applies this prohibition instead to any "bank having its principal place of business outside Ohio," (2) includes "opening" a deposit account in addition to establishing one, and (3) adds, as a means of doing so, by a "remote service unit" located in Ohio. The bill clarifies that this does not prohibit a person from making a deposit in that person's own account with a depository institution having its principal place of business outside Ohio by means of an ATM, remote service unit, or other money transmission device located in Ohio, the Internet, or an electronic deposit.[28]

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[25] R.C. 1101.05.

[26] R.C. 1101.15(A).

[27] R.C. 1101.15(C).

[28] R.C. 1101.16(C) and (E).

## Chapter 1103. – General Governance

### Application

This chapter of current law is amended to clarify that it applies to *state* banks.

### Name of bank; misleading use of name

Under the bill, the name of a state bank must include (1) "bank," "banking," "company," or "co." or (2) "savings," "loan," "savings and loan," "building and loan," or "thrift." It also may include the word "state," "federal," or "association," or, if approved by the Superintendent of Financial Institutions, another term.[29]

The bill prohibits any person from using the name of a state bank in an advertisement, solicitation, promotional, or other material in a way that may mislead another person into believing that the person issuing the advertisement, solicitation, promotional, or other material is associated or affiliated with the state bank, *unless* the person has obtained express written permission of the bank. A bank injured by a violation of this prohibition may sue for damages, a temporary restraining order, an injunction, or any other available remedy, and may also be awarded punitive damages.[30] Additionally, a person who violates the prohibition is subject to a civil penalty of $1,000 for each day the violation is committed, repeated, or continued.[31]

### Requirement of signatures

When the signatures of two authorized representatives of a state bank are required, one must be the chairperson of the board of directors, the president, or a vice-president, as determined by the board, and the other must be the secretary or an assistant secretary, also as determined by the board.[32]

## Chapter 1105. – Board of Directors

### Application

This chapter of current law is amended to indicate the provisions that apply only to *state* banks.

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[29] R.C. 1103.07(A).

[30] R.C. 1103.07(E).

[31] R.C. 1103.99.

[32] R.C. 1103.19.

### Classes of directors

Existing law permits the classification of directors into either two or three classes consisting of at least three directors each. The bill reduces the minimum number of directors to two.[33]

### Residency requirement

The bill eliminates the requirement that a majority of the directors be residents of Ohio or live within 100 miles of Ohio.[34]

### Outside directors

Current law generally requires that a majority of the directors be outside directors. The bill provides that anyone who is not an employee of the state bank or the bank holding company is to be considered an outside director.[35]

### Disqualification

Under existing law, no person who has been convicted of, or has pleaded guilty to, a felony involving dishonesty or breach of trust can take office as a director. The bill expands the basis for disqualification to "a felony or any crime involving an act of fraud, dishonesty, breach of trust, theft, or money laundering." Additionally, under the bill, it applies not only to the directors of a bank, but also to the directors of a subsidiary or affiliate of a bank. The Superintendent of Financial Institutions may waive this restriction if the crime bears no relation to finance or was a misdemeanor or minor misdemeanor or the equivalent of either.[36]

### Meetings; minutes

Law modified by the bill permits meetings of the board or a committee of the board to be held through any communications equipment, and "in any [other] manner permitted by the laws of this state," if all persons participating can communicate with each of the others. Additionally, the bill provides that minutes of the meetings need not

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[33] R.C. 1105.01(C).

[34] R.C. 1105.02(A)(1)(b).

[35] R.C. 1105.02(A)(1)(b).

[36] R.C. 1105.02(B).

include issues discussed while the board or any committee of the board was in executive session.[37]

### Removal of directors; vacancies

In addition to the reasons stated in current law, the bill provides that a director can be removed:

- By the board or the Superintendent if the director has been removed in accordance with federal law;
- By the board for any of the grounds set forth in the state bank's code of regulations or bylaws; and
- By a majority of the disinterested directors if they determine the director has a conflict of interest.[38]

The bill adds that a vacancy occurs if a director is removed, as well as if the director dies or resigns, as is provided in existing law. The bill also provides that, if a vacancy created on the board causes the number of directors to be less than that fixed by the articles of incorporation or code of regulations, the vacancy does not have to be filled until an appropriate candidate is identified and duly appointed or elected.[39]

Further, the bill states that the requirement for a quorum set forth in the General Corporation Law applies to a state bank's board of directors despite anything to the contrary in this statute.[40]

### Personal liability

Under existing law, a director of a bank who knowingly violates or permits any of the officers, agents, or employees of the bank to violate any provision of the Banking Law is liable personally and individually for all damages the bank, its shareholders, or any other person sustains because of the violation. The bill removes this provision and, instead, provides that a director, officer, employee, or other institution-affiliated party of a bank is *not* personally and individually liable for direct or indirect damages the bank, its shareholders or members, or any other person sustains in consequence of a violation of or failure to comply with any provision of the Banking Law, or the rules

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[37] R.C. 1105.08.

[38] R.C. 1105.10(A).

[39] R.C. 1105.10(C) and (D).

[40] R.C. 1105.10(E), referring to R.C. 1701.62, not in the bill.

adopted under the Law, including any civil money penalties, *unless* it can be shown that the director, officer, employee, or other party knowingly violated or failed to comply with that provision of law. However, this provision does not deprive a director of the defenses set forth in the General Corporation Law.[41]

## Chapter 1107. – Capital and Securities

### Definition of "treasury shares"

The bill eliminates the definition of "treasury shares."[42]

### Application

This chapter of current law is amended to clarify that it applies to *state* banks.

### Issuance of debt securities

Currently, the terms of any option granted in connection with the issuance of debt securities, or any right to convert debt securities to shares, cannot permit or require the holders of the securities to be held individually responsible for assessments for restoration of the banks' paid-in capital, on the basis of their status as holders of the securities. The bill removes this provision.[43]

### Bank shares: retired and canceled; assessments

The bill eliminates the provisions of current law stating that:

--In general, bank shares held as treasury shares one year after being acquired are deemed retired and to be authorized and unissued shares;

--Authorized and unissued bank shares that are not issued or reissued and fully paid in one year after being authorized or otherwise becoming authorized and unissued shares are deemed canceled;

--Preferred shares retired by a bank are to be canceled and not reissued;

--Both common and preferred shares are to be assessable for restoration of the bank's paid-in capital.[44]

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[41] R.C. 1105.11, referring to R.C. 1701.59, not in the bill.

[42] R.C. 1107.01, repealed.

[43] R.C. 1107.05(C).

[44] R.C. 1107.07.

### Employee stock options

Current law permits a bank, under certain circumstances, to carry out plans for the offering or sale of, or the grant of options on, the bank's shares to any or all employees of the bank or the bank's subsidiaries or to a trustee on their behalf. The bill clarifies that this provision applies to stock state banks, additionally authorizes "the grant of" these shares, and adds to the list of those eligible to receive the shares. Under the bill, those eligible include "any or all employees, officers, or directors of the bank or any of the bank's subsidiaries or affiliates, or to other parties, or to a trustee on their behalf."[45]

### Pre-emptive rights

The bill specifies that pre-emptive rights with respect to shares issued by a stock state bank chartered on or after July 1, 2017 (the date the bill takes effect), are to be governed by the General Corporation Law.[46]

### Bank's purchase of its own shares

Existing law lists the circumstances under which a bank can purchase its own shares. The bill eliminates that list and, instead, permits a stock state bank to purchase its own shares (1) with the prior written approval of the Superintendent of Financial Institutions and (2) in accordance with the General Corporation Law.[47]

### Dividends and distributions

The bill generally permits the payment of a dividend or distribution funded from a special reserve created from proceeds from the sale of a stock state bank's stock, subject to the approval of the Superintendent.[48]

## Chapter 1109. – Bank Powers

### Application

This chapter of existing law is amended to clarify the provisions that apply only to *state* banks.

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[45] R.C. 1107.09.

[46] R.C. 1107.11(C), referring to R.C. 1701.15, not in the bill.

[47] R.C. 1107.13, referring to R.C. 1701.35, not in the bill.

[48] R.C. 1107.15.

### General powers

The bill specifies that, in addition to what is otherwise authorized under the Banking Law, a state bank has and may exercise all powers, perform all acts, and provide all services that are permitted for national banks and federal savings associations.[49]

### Election to operate as a savings and loan association

Under the bill, a state bank may elect to operate as a savings and loan association by filing a written notice of that election with the Superintendent of Financial Institutions. Upon filing the notice, the bank is to be considered a savings and loan if its qualified thrift investments (1) equal or exceed 65% of its portfolio assets *and* (2) continue to equal or exceed 65% of its assets on a monthly average basis in nine out of every ten months. A state bank may revoke its election at any time by submitting written notice to the Superintendent.[50]

### Good faith reliance

The bill provides that a bank may, in good faith, rely without further investigation: (1) on any information, agreements, documents, and signatures provided by its customers as being true, accurate, complete, and authentic and (2) that the persons signing have full capacity and complete authority to execute and deliver any such documents and agreements and to act in such capacity as may be represented to the bank. For this purpose, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.[51]

### Electronic statements and notices

Under the bill, a bank may – with the customer's consent – provide electronically any statement, notice, or report required to be provided customers under this chapter. A customer's consent may be obtained electronically or in writing. Likewise, a bank customer may – with the bank's consent – provide electronically any notice required to be provided to the bank under this chapter. A bank's consent may be obtained electronically or in writing.[52]

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[49] R.C. 1109.02.

[50] R.C. 1109.021. As used in this provision, "portfolio assets" and "qualified thrift investments" have the same meanings as in 12 U.S.C. 1467a, as amended.

[51] R.C. 1109.04(A).

[52] R.C. 1109.04(B) and (C).

### Deposit contracts and accounts

Banks are currently required to provide a customer, at the time of opening a deposit account, a statement containing the terms and conditions of the deposit contract. The statement may be set forth on the depositor's signature card. The bill provides that the signature card may be electronic or in writing.

Before changing the terms and conditions of the contract, a bank is currently required to send written notice of the change to the depositor. The bill instead requires a bank to "provide notice, in written or electronic form."

Current law also requires a bank, for each deposit account, to send to the customer a written report of the customer's account. Under the bill, the bank is to "make available" to each deposit customer "a report, in written or electronic form, of the customer's deposit account activity since the last report was provided, unless the account is a certificate of deposit with no activity except for compounding interest."[53]

### Public deposits

The bill states that depositors of public funds that are collateralized by securities pledged by a bank in accordance with the Uniform Depository Act (R.C. Chapter 135.) and any applicable federal law have and maintain a first and best lien and security interest in and to the securities, any substitute securities, and the proceeds of those securities, in favor of the depositors.[54]

### Safes, vaults, and night depositories

Current law governs a bank's provision of safes, vaults, safe deposit boxes, night depositories, and other secure receptacles for the use of its customers. The bill adds that, unless agreed to in writing by the bank, nothing in this statute creates a bailment between a customer and the bank.[55]

### Relationship between bank and its obligor/customer

Current law specifies that, unless otherwise agreed in writing, the relationship between a bank and its obligor, with respect to any extension of credit, is that of a creditor and debtor, and creates no fiduciary or other relationship between the parties. The bill alters this provision, as follows: "Unless otherwise expressly agreed to in

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[53] R.C. 1109.05(B) and (C).

[54] R.C. 1109.05(E)(2).

[55] R.C. 1109.08.

writing *by the bank,* the relationship between a bank and its obligor, *or a bank and its customer*, creates no fiduciary or other relationship between the parties *or any special duty on the part of the bank to the customer or any other party*."[56]

## Extensions of credit

### Standards for extensions of credit involving real estate

Under current law, the Superintendent is required to prescribe standards for extensions of credit that are secured by liens on real estate or are made to finance the construction of a building or improvements to real estate. In prescribing those standards, the Superintendent is to consider certain factors, such as the risk the extensions of credit pose to the federal deposit insurance funds. The bill adds "or any other factors the Superintendent considers appropriate."[57]

### Limitations on extensions of credit to one person

The bill adds that, despite the limitations set forth in current law relative to the total loans and extension of credit that can be made to one person, a state bank may grant one or more loans in an aggregate amount of up to $500,000 to one person, subject to any applicable restrictions under federal law.[58]

### Extensions of credit to executive officers, directors, and principal shareholders

Existing law authorizes a bank – under certain conditions – to extend credit to any of its executive officers, directors, or principal shareholders, or to any of their related interests. It also specifies that, whenever an executive officer of a bank becomes indebted to any bank or banks, *other than the bank served as an executive officer*, on account of certain categories of extensions of credit in a total amount greater than the total amount of credit of the same category that could lawfully be extended to the executive officer by the bank served as an executive officer, the executive officer must submit a report to the board of directors of the bank providing the date and amount of each extension of credit, the security for each, and the purpose for which the proceeds are to be used. The bill removes this reporting requirement.[59]

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[56] R.C. 1109.15(E) and 1109.151.

[57] R.C. 1109.16.

[58] R.C. 1109.22.

[59] R.C. 1109.23 and 1109.24.

### Holding of real estate or stock acquired as satisfaction of debt

Existing law limits the time in which a bank may own or hold (1) real estate it acquires by foreclosure or otherwise in satisfaction of a previously contracted debt and (2) stock of companies acquired in satisfaction of a previously contracted debt or taken on a refinancing plan involving an investment. The bill replaces the word "stock" with "shares" and specifies that these limitations do not apply to real estate or shares owned or held by a state bank affiliate.[60]

### Investments

#### Real estate

Existing law authorizes a bank to purchase or otherwise invest in real estate the board of directors considers necessary for transaction of the bank's business, including by ownership of stock of a wholly owned subsidiary corporation having as its exclusive authority the ownership and management of the bank's real estate interests. The bill replaces "by ownership of stock of a wholly owned subsidiary corporation" with "by ownership of an entity."[61]

#### Debt securities

Banks are currently authorized to invest in specified bonds, debentures, and other debt securities. Additionally, the Superintendent may approve banks' investment in other debt securities and obligations in which national banks are permitted to invest. The bill eliminates the Superintendent's authority to approve those investments and, instead, allows state banks to invest in debt securities and obligations in which other banks, savings banks, and savings associations insured by the FDIC (Federal Deposit Insurance Corporation), or federal or state-chartered credit unions, are permitted to invest.[62]

#### Stock of federally chartered banks engage in foreign banking

Existing law permits a bank to apply to the Superintendent for permission to invest a total amount not exceeding 10% of the bank's paid-in capital and surplus in the stock of certain banks or corporations chartered or incorporated under federal law and principally engaged in international or foreign banking. The bill clarifies that the

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[60] R.C. 1109.26.

[61] R.C. 1109.31.

[62] R.C. 1109.32.

limitation on paid-in capital and surplus refers to a *stock* state bank, and it adds – for mutual state banks – a limitation of 10% of the bank's retained earnings.[63]

**Venture capital firms and small businesses**

A bank is currently authorized to invest, in the aggregate, 5% of its paid-in capital and surplus in shares of certain venture capital firms and small businesses. The bill specifies that this limitation applies to *stock* state banks and adds – for mutual state banks – a limitation of 5% of its retained earnings.[64]

**Banker's bank or holding company**

The bill eliminates the prohibition against a bank or affiliate of a bank owning or controlling or having the power to vote shares of: (1) more than one bankers' bank, (2) more than one bankers' bank holding company, or (3) both a bankers' bank and a bankers' bank holding company, unless the bankers' bank is an affiliate of that bankers' bank holding company.[65]

**Bank subsidiary corporations and service corporations**

Under existing law, a bank may invest, in the aggregate, 25% of its assets in the securities of bank subsidiary corporations and bank service corporations. Prior to investing in, acquiring, or establishing a bank subsidiary corporation or bank service corporation, or performing new activities in such a corporation, a bank must obtain the approval of the Superintendent. For these purposes, the bill makes the following changes:

--It clarifies that only a bank subsidiary corporation *that is a wholly owned subsidiary of the state bank* that may engage in any activities, except taking deposits, that are a part of the business of banking.

--Rather than requiring that a bank service corporation be owned solely by one or more depository institutions, as in current law, the bill requires that it be owned solely by one or more banks.

--The bill authorizes a bank subsidiary corporation or a bank service corporation to invest in a lower-tier bank subsidiary corporation or bank service corporation, subject to certain requirements.

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[63] R.C. 1109.33.

[64] R.C. 1109.35(A).

[65] R.C. 1109.43.

--The bill moves the provisions relative to a state bank's additional investment authority under R.C. 1109.39 and 1109.40 to a new section.[66]

#### In a single issuer

Under current law, a bank cannot invest more than 15% of its capital in the stock, obligations, or other securities of one issuer, subject to certain exceptions. The bill replaces the term "stock" with "shares."

One of the current exceptions is investment in the obligations or securities of the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The bill clarifies that this applies to obligations or securities *other than stock.* It also adds another exception for the shares, obligations, securities, or other interests of any other issuer with the written approval of the Superintendent.[67]

### Transactions with affiliates

The bill specifies that the existing law governing transactions with affiliates applies to *state* banks and their subsidiaries. It also expands the definition of "company" used in that law to include a limited liability company.[68]

### Sale of insurance

The bill permits a state bank to engage in the business of selling insurance through a subsidiary insurance agency subject to licensing under Ohio law and the law of every other state in which services are provided by the bank or its subsidiary.[69]

### Retention of records

Existing law requires that each bank retain or preserve bank records and supporting documents for only a specified period of time, based on the type of record or document involved. The bill adds "unless a longer record retention period is required by applicable federal law or regulation."[70]

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[66] R.C. 1109.44 and 1109.441.

[67] R.C. 1109.47.

[68] R.C. 1109.53, 1109.54, and 1109.55.

[69] R.C. 1109.62.

[70] R.C. 1109.69.

## Chapter 1111. – Trust Companies

The only revisions made in this chapter are conforming changes in recognition of the single "bank" charter, an update of the definition of "investment company," and corrections required by the elimination of the Office of Thrift Supervision and the resulting transfer of regulatory authority over federal savings associations to the Office of the Comptroller of the Currency.

## Chapter 1113. – Stock State Banks: Corporate Governance/Formation

### General Corporation Law applicable

The bill specifies that a stock state banking corporation is to be created, organized, and governed, its business is to be conducted, and its directors are to be chosen, in the same manner as is provided under the General Corporation Law, to the extent it is not inconsistent with the Banking Law.[71]

### Publication of the proposed incorporation

Under current law, within ten days after receipt of the Superintendent of Financial Institution's notice of acceptance of an application for approval to incorporate a bank, the incorporators must publish notice of the proposed incorporation in a newspaper of general circulation in the county where the bank's initial banking office is to be located. The bill clarifies that the notice can be published "in print or in a comparable electronic format."[72]

### Incorporators adoption of amendments to articles of incorporation

Existing law sets forth procedures under which the incorporators, before any subscription to shares has been received, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Generally, upon their adoption of an amendment, the incorporators must send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent is required to conduct an examination to determine if (1) the amendment and the manner and basis for its adoption comply with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent must approve or disapprove it.

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[71] R.C. 1113.01.

[72] R.C. 1113.03.

The bill revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the bill, if the incorporators propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the incorporators. Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 30 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required. In that event, the Superintendent is to request the information in writing within 15 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 30 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval. If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the time period required, the proposed amendment is to be considered approved.[73]

After the incorporators adopt the approved amendment, they must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption comply with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.[74]

### Publication of certificate of authority to commence business

Under current law, after the Superintendent issues a certificate of authority to commence business, the bank must cause the certificate to be published in a newspaper of general circulation in the county where the bank's initial banking office is located.

[73] R.C. 1113.05(C).

[74] R.C. 1113.05(D) to (F).

The bill clarifies that the notice can be published "in print or in a comparable electronic format."[75]

### Code of regulations

Current law requires each bank to have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank's articles of incorporation. The bill repeals provisions that specify:

(1) How the original code is to be adopted;

(2) How the shareholders may amend the code or adopt a new one;

(3) How notice of a shareholders' meeting to adopt an amendment to the code is to be given;

(4) What provisions may be included in the code; and

(5) The procedures to be followed if the code is to be amended without a shareholders' meeting.[76]

### Shareholder adoption of amendments to articles of incorporation

#### Procedure

Existing law sets forth the procedures under which the shareholders, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Generally, upon their adoption of an amendment, the bank must send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent is required to conduct an examination to determine if (1) the manner of its adoption complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent must approve or disapprove it.

The bill revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the bill, if the shareholders propose the adoption of an

[75] R.C. 1113.09.

[76] R.C. 1113.11.

amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the shareholders.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 30 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 15 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 30 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the proposed amendment within the required time period, it is to be considered approved.[77]

After the shareholders adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent must then conduct an examination to determine if the manner of adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.[78]

**Signature of authorized representatives**

Currently, if the *directors* proposed the amendment to the bank's articles of incorporation, the certificate sent to the Superintendent must be signed by "bank

[77] R.C. 1113.12(F).

[78] R.C. 1113.12(G) to (I).

officers." The bill instead requires that it be signed by "the bank's authorized representatives."[79]

#### Amendment to permit certain shares

The law currently permits the shareholders to adopt an amendment to the bank's articles of incorporation to permit the bank to have authorized and unissued shares or treasury shares for a specific purpose. The bill eliminates the requirement that there be a specific purpose for the shares.[80]

### Directors adoption of amendments to articles of incorporation

#### Procedure

Existing law sets forth the procedures under which the board of directors, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation for certain purposes or adopt amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Generally, upon the directors' adoption of an amendment, the bank must send the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent is required to conduct an examination to determine if (1) the amendment and the manner of and basis for its adoption comply with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent must approve or disapprove it.

The bill revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the bill, if the directors propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the directors.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors. Within 30 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

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[79] R.C. 1113.12(G). See also R.C. 1103.19.

[80] R.C. 1113.12(D).

In that event, the Superintendent is to request the information in writing within 15 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 30 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the required time period, it is to be considered approved.[81]

After the directors adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.[82]

#### Signature of authorized representatives

Currently, upon the directors' adoption of an amendment to the article of incorporation, the certificate sent to the Superintendent must be signed by "bank officers." The bill instead requires that it be signed by *the bank's authorized representatives*.[83]

### Annual meeting of shareholders

A bank's shareholders are currently required to hold an annual meeting for purposes including the election of directors and the presentation of financial statements. The law specifies the manner in which written notice of the meeting is to be provided and the period of time for giving the notice. The bill eliminates those specific requirements and, instead, provides that the meeting may be called for any of the

[81] R.C. 1113.13(D).

[82] R.C. 1113.13(E) to (G).

[83] R.C. 1113.13(E). See also R.C. 1103.19.

reasons and in the manner set forth in the General Corporation Law. Notice of the meeting is also to be provided in accordance with that Law.[84]

Additionally, the bill states that the requirements of this provision do not apply with respect to annual or special meetings of shareholders of a stock state bank that is wholly owned, except for directors' qualifying shares, if any, by a bank holding company or savings and loan holding company.[85]

### Voting by shareholders

Current law states that, in elections of directors and in deciding other questions at shareholder meetings, each holder of a bank's voting shares is entitled to one vote for each share held and cannot accumulate the votes unless otherwise provided in the articles of incorporation. Under the bill, this applies "except as otherwise expressly provided in the terms of any class of shares issued by a stock state bank."[86]

Current law also permits any shareholder to vote by proxy authorized in writing. The bill limits this right to vote by proxy to those shareholders *eligible to vote*. And it specifies that an appointment of a proxy expires in accordance with the General Corporation Law.[87]

### Shareholder lists; right to examine records

Under existing law, the board of directors – upon request of any shareholder at any meeting of shareholders – must produce a list of the shareholders of record. The bill clarifies that the request can only be made by any shareholder "eligible to attend and vote" at any meeting of "the bank's" shareholders.

Lastly, the bill states that the authority granted under the Banking Law to inspect the books and records of a stock state bank applies solely to the Superintendent and to the bank's shareholders of record.[88]

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[84] R.C. 1113.14(A) to (C), referring to R.C. 1701.40 and 1701.41, not in the bill.

[85] R.C. 1113.14(D).

[86] R.C. 1113.16.

[87] R.C. 1113.16, referring to R.C. 1701.48, not in the bill.

[88] R.C. 1113.17.

## Chapter 1114. – Mutual State Banks: Corporate Governance/Formation

### General Corporation Law applicable

The bill specifies that a mutual state bank is to be created, organized, governed, and its business conducted in the same manner as is provided under the General Corporation Law, to the extent that it is not inconsistent with Banking Law or the rules adopted under the Banking Law.[89]

### Incorporating a mutual state bank

#### Application

Five or more individuals, at least one of whom is a resident of Ohio, may incorporate a mutual state bank with the approval of the Superintendent of Financial Institutions. To apply for approval, the individuals must submit an application that includes:

- The proposed articles of incorporation and code of regulations;
- An application for reservation of a name, if reservation is desired by the incorporators and has not been previously filed;
- The location and a description of the proposed initial banking office;
- Information to demonstrate the proposed bank will satisfy the requirements of this chapter; and
- Any other information the Superintendent requires.[90]

#### Publication of the proposed incorporation; comments

Within ten days after receipt of the Superintendent's notice of acceptance of an application for approval to incorporate a mutual state bank, the incorporators must publish, in print or in a comparable electronic format, notice of the proposed incorporation in a newspaper of general circulation in the county where the bank's initial banking office is to be located. The notice must be published once a week for two weeks and a certified copy of it is to be furnished to the Superintendent. Any comments

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[89] R.C. 1114.01.

[90] R.C. 1114.02. The articles of incorporation also must contain the purpose or purposes for which the bank is formed. The articles may set forth any other lawful provision regulating the exercise of authority of the bank and certain persons and any provision that could be set forth in the code of regulations. (R.C. 1114.04.)

on the application must be filed with the Superintendent within 30 days of the first publication of the notice. If any comments are received, the Superintendent must determine whether the comments are relevant to the incorporation requirements and, if so, investigate the comments in a manner that Superintendent considers appropriate.[91]

### Approval of the application

After examining all of the facts connected with the application, the Superintendent is to determine if the following requirements are met:

--The proposed articles of incorporation and code of regulations, application for reservation of name, applicable fees, and other items required meet the requirements of the Revised Code.

--The population and economic characteristics of the area primarily to be served afford reasonable promise of adequate support for the proposed bank.

--The competence, experience, and integrity of the proposed directors and officers are such as to command the confidence of the community and warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

--The capital of the proposed bank is adequate in relation to the amount and character of the anticipated business of the bank and the safety of prospective depositors.[92]

Within 180 days after acceptance of the application, the Superintendent must approve or disapprove the incorporation based on the examination. In giving approval, the Superintendent may impose conditions that must be met prior to issuing a certificate of authority to commence business. If the application is approved, the Superintendent must make a certificate to that effect and forward the certificate and the articles of incorporation to the Secretary of State for filing.[93]

## Authorized capital

The initial funding required to organize a mutual state bank, known as the "authorized capital," must be of such amount as the Superintendent determines based on the amount and character of the bank's anticipated business and the safety of

[91] R.C. 1114.03(A) and (B).

[92] R.C. 1114.03(C).

[93] R.C. 1114.03(D) and (E).

prospective depositors. Additionally, the Superintendent may fix the amount of the expense fund for operating losses to be created by nonrefundable contributions.

The bank's organization may be completed when a sum equal to 5% of the authorized capital is paid in, and the names and addresses of its officers, its code of regulations, and its bylaws have been filed with and approved by the Superintendent. Five years after the bank commences business, any remaining balance in the expense fund must be transferred to retained earnings if the bank is on a profitable operating basis as determined by the Superintendent.[94]

### Certificate of authority to commence business

Until a mutual state bank organized under this chapter has received a certificate of authority to commence business issued by the Superintendent, it cannot accept deposits, incur indebtedness, or transact any business other than business incidental to its organization. The bank must file a report with the Superintendent when it has completed everything required by the Superintendent before it can be authorized to commence business. Upon receipt of that report, the Superintendent is to examine the affairs of the bank and determine if the bank has complied with all of the requirements necessary to entitle it to engage in business.[95]

The bill requires the Superintendent to issue a certificate of authority to commence business if the Superintendent (1) is satisfied that the bank is entitled to commence business and (2) has received written confirmation from the FDIC that the bank's application to become an insured bank was approved. The bank must cause the certificate to be published, in print or in a comparable electronic format, once a week for two consecutive weeks in a newspaper of general circulation in the county where the bank's initial banking office is located.[96]

### Members of a mutual state bank; capital

A depositor of a mutual state bank is a voting member and has such ownership interest in the bank as may be provided in the terms and conditions set forth in the articles of incorporation, code of regulations, and bylaws of the bank. The code of regulations may provide that all borrowers from the bank are members and if so, must provide for their rights and privileges.

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[94] R.C. 1114.05.

[95] R.C. 1114.06.

[96] R.C. 1114.07.

Unless otherwise provided in the articles of incorporation or code of regulations, a proxy granted by a depositor to officers and directors of a mutual state bank expires on the date specified in the proxy. If no date is specified, the authority granted by the proxy is perpetual.

The capital of a mutual state bank is to be in the form of retained earnings or in any other form the Superintendent approves, subject to applicable federal and state laws.

In the event of a liquidation or dissolution, the priority of claims is to be established in accordance with the Banking Law.[97]

### Incorporators' adoption of amendments to articles of incorporation

Before any member deposits have been received, the incorporators may, by unanimous written action, adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Any *proposed* amendment must be provided to the Superintendent for review and approval *prior* to adoption by the incorporators.[98]

#### Prior approval

Upon receiving a proposed amendment, the Superintendent is to conduct an examination to determine if the amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors. Within 30 days after receiving the amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 15 days after the date the amendment was received. The bank has 30 days to submit the information. The Superintendent must notify the bank of the approval or disapproval within 30 days after receiving the additional information and, if the proposed amendment is disapproved, provide the reasons for the disapproval.

If the Superintendent fails to take action on an amendment within the required time period, it is to be considered approved.[99]

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[97] R.C. 1114.08.

[98] R.C. 1114.09(A) to (C)(1).

[99] R.C. 1114.09(C)(2) to (4).

### Final approval

After the incorporators adopt the approved amendment, they must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent is to conduct an examination to determine if the manner of and basis for the amendment's adoption comply with the applicable statutory requirements and, within 30 days after receiving the certificate, approve or disapprove the amendment. If the amendment is approved, the Superintendent must send a copy to the Secretary of State for filing. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing. The amendment is effective when so filed.[100]

## Code of regulations

Each mutual state bank must have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank's articles of incorporation.[101]

## Notice of meetings

Whenever members of a mutual state bank are required or authorized to elect directors or take any other action at a meeting, annual or special, a notice of the meeting must be given by notice served upon or mailed to members in accordance with the General Corporation Law.[102]

## Member or director adoption of amendment to articles of incorporation

A mutual state bank's code of regulations may provide for the amendment of the articles of incorporation or code of regulations, or the adoption of amended articles of incorporation or code of regulations, at any meeting of the members for which proper notice has been given. (For purposes of this discussion, the amendment of the articles of incorporation or code of regulations, or the adoption of amended articles of incorporation or code of regulations, are collectively referred to as "amendments.") These amendments must be adopted by a two-thirds vote of votes cast in person or by proxy at the meeting or, if the articles of incorporation or code of regulations provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a

[100] R.C. 1114.09(D) to (F).

[101] R.C. 1114.10.

[102] R.C. 1114.12, referring to R.C. 1701.41.

majority, of the voting members represented at the meeting. The number of votes that each member may cast is to be determined by the code of regulations.[103]

Unless precluded by its articles of incorporation or code of regulations, a mutual state bank may adopt amendments at any meeting authorized in writing by majority of its members of record if:

--Proper written notice of the meeting is given;

--The notice of the proposed action to be taken at the meeting is in a form approved by the Superintendent;

--The proposed action is approved by a two-thirds vote of the votes cast authorizing the meeting; and

--A majority of the members of record are present in person or by proxy at the meeting.[104]

**Prior approval**

If the members or board of directors propose the adoption of an amendment, the mutual state bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to the adoption by the members or directors. Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors.

Within 30 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required. In that event, the Superintendent must request the information in writing within 15 days after the proposed amendment was received. The bank has 30 days to submit the information. The Superintendent must notify the bank of the Superintendent's approval or disapproval within 30 days after receiving the additional information and, if the proposed amendment is disapproved, provide the reasons for the disapproval. If the

[103] R.C. 1114.11(A)(1).

[104] R.C. 1114.11(A)(2).

Superintendent fails to take action on an amendment within the required time period, it is to be considered approved.[105]

#### Final approval

If the members adopt the approved amendment, the bank must provide to the Superintendent a certificate containing a copy of the members' resolution adopting the amendment and a statement of the manner of and basis for its adoption. (If the board of directors proposed the amendment, the certificate must include a copy of the resolution adopted by the directors to propose the amendment to the members.) These certificates must be signed by the bank's authorized representatives.

If the board of directors adopts the approved amendment, the bank must provide to the Superintendent a copy of the amendment along with a certificate containing a copy of the directors' resolution adopting the amendment and a statement of the manner of and basis for its adoption. The certificate must be signed by the bank's authorized representatives.[106]

The Superintendent is to then conduct an examination to determine if the manner of and basis for adoption of the amendment comply with the applicable statutory requirements and, within 30 days after receiving the certificate, approve or disapprove the amendment. If the amendment is approved, the Superintendent must forward a copy of the amendment and certificate to the Secretary of State for filing. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward the copies to the Secretary of State for filing. The amendment is effective when so filed.[107]

## Chapter 1115. – Conversions/Acquisitions/Mergers

### Conversions

#### Ohio bank into national or other state institution

Under the bill, a *stock* state bank may:

(1) Convert into a national bank or federal savings association if the conversion is approved by the Office of the Comptroller of the Currency and the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority

[105] R.C. 1114.11(D).

[106] R.C. 1114.11(E).

[107] R.C. 1114.11(F) and (G).

as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock;

(2) Convert into a bank, savings bank, or savings association pursuant to the laws of another state if the conversion is approved by the regulatory authority of the other state and the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock.

A *mutual* state bank may:

(1) Convert into a national bank or federal savings association if the conversion is approved by the Office of the Comptroller of the Currency, the affirmative vote of two-thirds of the bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption;

(2) Convert into bank, savings bank, or savings association pursuant to the laws of another state if the conversion is approved by the regulatory authority of the other state, the affirmative vote of two-thirds of the bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption.

As soon as the conversion is effective, a state bank must file with the Superintendent of Financial Institutions all information the Superintendent determines is necessary to reflect in the state's records that the bank is no longer a corporation organized and doing business under Ohio law.[108]

**National or other state institution into Ohio bank**

The bill provides that a national bank, a bank doing business under authority granted by the bank regulatory authority of another state, a savings association, a savings bank, or a state or federally chartered credit union may, with the approval of the Superintendent, convert into a stock state bank or mutual state bank by submitting an application in accordance with rules adopted by the Superintendent.[109]

**Mutual state bank into stock state bank and vice versa**

The bill authorizes a mutual state bank to convert into a stock state bank if the conversion is approved by the Superintendent, the affirmative vote of two-thirds of the

[108] R.C. 1115.01.

[109] R.C. 1115.02.

bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption.

A stock state may convert into a mutual state bank if the conversion is approved by the Superintendent and the affirmative vote or written consent of the holders of two-thirds, or any other proportion not less than a majority as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock.

Any such conversion is effective on the date indicated in the materials filed with the Secretary of State by the converting bank. The bank resulting from the conversion has all the property, rights, interests, and powers of its predecessor bank within the limits of the charter of the resulting bank, and all duties, trust, obligations, and liabilities of the predecessor bank continue in the bank resulting from the conversion.[110]

### Acquisitions

Existing law prohibits any person from acquiring control of a state bank through a purchase, transfer, or other disposition of voting securities of a state bank unless the Superintendent has been given 60 days' prior written notice of the proposed acquisition and, within that time period, the Superintendent has not disapproved the acquisition or extended the time during which the Superintendent may disapprove it. The notice provided to the Superintendent must include specific information, such as the identity and business background of each person on whose behalf the acquisition is to be made, that person's assets and liabilities, the terms and conditions of the acquisition, and the source and amount of the funds to be used in making the acquisition. The bill eliminates the list of specific information that is required and, instead, requires that the notice contain any information the Superintendent may require by rule.[111]

Current law also specifies the reasons for which the Superintendent may disapprove any proposed acquisition of control. The bill removes the following two reasons:

(1) If the Superintendent finds that the proposed acquisition would result in a monopoly or further any conspiracy to monopolize the business of banking in any part of Ohio or any markets served by the state bank;

(2) If the Superintendent finds that the effect of the proposed acquisition in any part of Ohio and any markets served by the state bank may be to substantially lessen

[110] R.C. 1115.03.

[111] R.C. 1115.06(B) and (C).

competition or in any other manner restrain trade, and the anticompetitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the needs of the community to be served.[112]

## Consolidations/Mergers

### With another financial institution

The bill modifies current law to permit a state bank to consolidate or merge with another state bank, a bank, savings bank, or savings association doing business under authority granted by the bank regulatory of another state, a national bank, or a federal savings association, regardless of where it maintains its principal place of business, with the approval of:

- The directors of both constituent corporations;

  (1) The shareholders of each constituent state bank that is a *stock state bank*, by the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the outstanding shares of each class of the bank's stock; or

  (2) The members of each constituent state bank that is a *mutual state bank*, by the affirmative vote of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the voting members.

- The shareholders or members of the other constituent bank, savings bank, or savings association as required by the applicable state or federal law, articles of incorporation, or code of regulations; and

- If the resulting corporation will be:

  (1) A state bank, the Superintendent;

  (2) A national bank or federal savings association, the Office of the Comptroller of the Currency;

  (3) A bank, savings bank, or savings association doing business under authority granted by the regulatory authority of another state, the state

[112] R.C. 1115.06(F).

regulatory authority under which the bank, savings bank, or savings association is doing business.[113]

Currently, for a merger or consolidation in which the resulting or surviving corporation will be a state bank, an application that includes an officers' certification regarding the transaction, a copy of the consolidation or merger agreement, and any other information the Superintendent requires, must be filed with the Superintendent for the Superintendent's approval. The bill eliminates the officers' certification.[114]

Existing law also specifies the factors the Superintendent must consider when deciding whether to approve or disapprove an application. The bill removes the following two factors:

(1) Whether the transaction would result in a monopoly or further any conspiracy to monopolize the business of banking in any part of Ohio or any markets served by the resulting or surviving bank;

(2) Whether the effect of the proposed transaction in any part of Ohio or any markets served by the resulting or surviving bank may be to substantially lessen competition or in any other manner restrain trade, unless the Superintendent finds the anticompetitive effects would clearly be outweighed in the public interest by the probable effect of the transaction in meeting the needs of the community to be served.[115]

The bill states that the shareholders of the nonsurviving stock state bank have a right to dissent and are entitled to relief as dissenting shareholders under the General Corporation Law for those transactions requiring prior shareholder approval.[116]

**With an affiliate**

The bill modifies current law to authorize a state bank to merge with any of its affiliates with the approval of:

- The directors of all constituent corporations to the merger;

  (1) The shareholders of each constituent *stock state bank,* by the affirmative vote or written consent of the holders of two-thirds, or other proportion

[113] R.C. 1115.11(A).

[114] R.C. 1115.11(B).

[115] R.C. 1115.11(D).

[116] R.C. 1115.11(I), referring to R.C. 1701.85, not in the bill.

not less than a majority as the bank's articles of incorporation provide, of the outstanding shares of each class of the bank's stock; or

(2) The members of each constituent *mutual state bank*, the affirmative vote of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the voting members.

- The shareholders or members of each other constituent to the merger as required by the applicable state or federal law, articles of incorporation, or code of regulations; and

- The Superintendent.

Currently, the bank that will be the surviving bank in the merger must file, for the Superintendent's approval, an application including an officers' certification regarding the transaction, a copy of the merger agreement, and any other information the Superintendent requires. The bill eliminates the officers' certification.[117]

### Transfers or acquisitions of assets and liabilities

Under existing law, a state bank may transfer assets and liabilities to, and acquire assets and liabilities from, another state bank, a bank doing business under authority granted by the bank regulatory of another state, or a national bank, savings bank, or savings association, regardless of where it maintains its principal place of business, with the approval of certain parties.

The bill clarifies that, if the assets to be transferred equal more than 50% of the assets of a transferring or acquiring state bank at the time of the transfer and the institution is a *stock state bank*, the shareholders of the state bank must approve of the transaction by the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation provide, of the outstanding shares of each class of the bank's stock. If the assets to be transferred equal more than 50% of the assets of a transferring or acquiring state bank at the time of the transfer and the institution is a *mutual state bank*, the members of the state bank must approve by the affirmative vote of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the voting members.[118]

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[117] R.C. 1115.27.

[118] R.C. 1115.14(A).

Currently, if the assets to be transferred equal more than 50% of the assets of the acquiring state bank, the Superintendent also must approve the transaction. In that case, the acquiring state bank must file an application with Superintendent that includes an officers' certification regarding the transaction, a copy of the transfer agreement, and any other information the Superintendent requires. The bill eliminates the officers' certification.[119]

Existing law also specifies the factors the Superintendent must consider when deciding whether to approve an application. The bill removes the following two factors:

(1) Whether the transaction would result in a monopoly or further any conspiracy to monopolize the business of banking in any part of Ohio and any markets served by the acquiring bank;

(2) Whether the effect of the proposed transaction in any part of Ohio or any markets served by the acquiring bank may be to substantially lessen competition or in any other manner restrain trade, unless the Superintendent finds the anticompetitive effects would clearly be outweighed in the public interest by the probable effect of the transaction in meeting the needs of the community to be served.[120]

The bill states that the shareholders of a stock state bank whose assets have been transferred have a right to dissent and are entitled to relief as dissenting shareholders under the General Corporation Law for those transactions requiring prior shareholder approval.[121]

Lastly, current law authorizes the immediate transfer of assets and liabilities whenever an emergency exists with regard to a state bank, national bank, savings bank, or savings association. However, a transfer involving a state bank cannot be made without the consent of the Superintendent. The bill adds that the consent must be given in writing.[122]

### Rights of creditors protected

Existing law provides that, in any transfer, consolidation, or merger, the rights of creditors are preserved unimpaired and the constituent corporations are deemed to continue their separate existence if the continuation is necessary to preserve any

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[119] R.C. 1115.14(B).

[120] R.C. 1115.14(D).

[121] R.C. 1115.14(H), referring to R.C. 1701.85, not in the bill.

[122] R.C. 1115.15.

creditor's right. Under the bill, this provision applies only to transfers. With respect to consolidations or mergers, the bill adds that the rights and obligations of the surviving or new bank are to be governed by the General Corporation Law.[123]

### Shelf charter

The bill authorizes the Superintendent, at the Superintendent's sole discretion, to grant a "shelf charter" (that is, the preliminary conditional approval of a charter) to an applicant that intends or desires to enter into a transaction resulting in any of the following:

--Formation of an interim bank under this chapter;

--Acquisition of control of a designated or undesignated state bank;

--Acquisition of control of a designated or undesignated bank chartered by the banking authority of any other state or the United States that the person intends to convert to a state bank;

--Acquisition of assets from and assumption of liabilities, pursuant to this chapter, of a bank or from the FDIC as receiver of a designated or undesignated bank headquartered in Ohio or any other state that the person intends to convert to a state bank; or

--Formation of a de novo (new) bank pursuant to the Banking Law.

In determining whether to grant a shelf charter, the Superintendent must consider (1) the availability of adequate capital for the transaction, (2) the existence of acceptable business plans, (3) whether acceptable management, directors, and control persons are identified, and (4) whether all necessary approvals from state and federal agencies have been secured.

A shelf charter granted by the Superintendent, and any final approval for one of the transactions described above, are subject to any conditions and ongoing requirements the Superintendent considers appropriate. An applicant granted a shelf charter is prohibited from exercising control over the bank or consummating the transaction authorized by the charter until the Superintendent gives final approval of the transaction.

A shelf charter expires 24 months after the date it is granted; however:

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[123] R.C. 1115.20, referring to R.C. 1701.82, not in the bill.

--The Superintendent may voluntarily extend the expiration date at any time or may approve a written request for an extension submitted by the person who was granted the shelf charter.

--The person granted the shelf charter may withdraw it at any time.

--The Superintendent may modify, suspend, or revoke a shelf charter.

The bill authorizes the Superintendent to adopt rules and issue interpretive guidelines the Superintendent considers necessary and appropriate for the implementation of this provision.[124]

## Chapter 1116. – Mutual Holding Companies

### Definitions

"**Acquiree mutual bank**" means any state bank, savings association, or savings bank that (1) is acquired by a mutual holding company as part of, and concurrently with, mutual holding company reorganization and (2) is in the mutual form immediately prior to the acquisition.[125]

"**Reorganization plan**" means the plan to reorganize into a mutual holding company structure as described under this chapter.[126]

"**Reorganizing mutual state bank**" means a mutual state bank that proposes to reorganize into a mutual holding company structure in accordance with this chapter.[127]

"**Resulting mutual holding company**" means a bank holding company organized in mutual form under this chapter and, unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company organized under this chapter.[128]

"**Resulting stock state bank**" means a stock state bank that is organized as a subsidiary of a reorganizing mutual state bank to receive a substantial part of the assets

[124] R.C. 1115.24.

[125] R.C. 1116.01(A).

[126] R.C. 1116.01(B).

[127] R.C. 1116.01(C).

[128] R.C. 1116.01(D).

and liabilities, including all deposit accounts, of the reorganizing mutual state bank upon consummation of the reorganization.[129]

"**Stock bank**" means a bank that has an ownership structure in the form of shares of stock and is doing business under authority granted by the Superintendent of Financial Institutions or the bank regulatory authority of another state or the United States.[130]

"**Subsidiary holding company**" means a stock company that is controlled by a mutual holding company and that owns the stock of a stock state bank whose depositors have membership rights in the parent mutual holding company.[131]

### General Corporation Law applicable

Under the bill, a mutual holding company and any subsidiary of a mutual holding company must be created, organized, and governed, and its business must be conducted, in all respects in the same manner as is provided under the General Corporation Law, to the extent that it is not inconsistent with the Banking Law or the rules adopted under the Banking Law.[132] However, a nonbank subsidiary of a mutual holding company may be organized under the general corporate laws of another state of the United States.[133]

A mutual holding company and any subsidiary of a mutual holding company organized under this chapter are subject to all powers, remedies, and sanctions provided to the Superintendent and the Division of Financial Institutions under the Banking Law.[134]

### Mutual state bank reorganization as mutual holding company

The bill permits a mutual state bank to reorganize to become a mutual holding company with approval from the Superintendent and in one of the following manners:

--By organizing one or more subsidiary stock state banks, one or more of which may be an interim stock state bank, the ownership of which must be evidenced by

[129] R.C. 1116.01(E).

[130] R.C. 1116.01(F).

[131] R.C. 1116.01(G).

[132] R.C. 1116.02(A).

[133] R.C. 1116.02(C).

[134] R.C. 1116.02(B).

shares of stock to be owned by the reorganizing mutual state bank and by transferring a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to one or more subsidiary stock state banks;

--By organizing a first tier subsidiary stock state bank, causing that subsidiary to organize a second tier subsidiary stock state bank, and transferring, by merger of the reorganizing mutual state bank with the second tier subsidiary, a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to the resulting stock state bank at which time the first tier subsidiary stock state bank becomes a mutual holding company;

--In any other manner approved by the Superintendent.[135]

As part of its reorganization, a mutual state bank may organize as a subsidiary holding company of the mutual holding company, which subsidiary holding company owns all of the outstanding voting stock of the resulting stock state bank.[136]

**Board and member approval of reorganization; application**

Before reorganizing into a mutual holding company, a reorganizing mutual state bank must do all of the following:

(1) Obtain approval of a reorganization plan by a two-thirds vote of the board of directors of the reorganizing mutual state bank and any acquiree mutual bank;

(2) Obtain approval of the reorganization plan by a two-thirds vote, or such other proportion not less than a majority as the reorganizing mutual state bank's or any acquiree mutual bank's articles of incorporation or code of regulations provide, of the members' votes cast in person or by proxy at the annual meeting or at a special meeting of members called by the board of directors for the purpose of approving the reorganization plan;

(3) File a reorganization application in the form prescribed by the Superintendent that includes (a) an officers' certification that the reorganization plan has been approved by the directors and members in accordance with applicable state law, articles of incorporation, code of regulations, or bylaws, (b) a copy of the plan, and (c) any other information the Superintendent requires.[137]

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[135] R.C. 1116.05(A).

[136] R.C. 1116.05(B).

[137] R.C. 1116.05(C).

**Reorganization plan**

The bill requires that each reorganization plan contain a description of all significant terms of the proposed reorganization and include all of the following:

- Any proposed stock issuance plan;
- An opinion of counsel, or a ruling from the U.S. Internal Revenue Service and the Ohio Department of Taxation, as to the federal and state tax treatment of the proposed reorganization;
- A copy of the articles of incorporation and code of regulations of the proposed mutual holding company, the resulting stock state bank, and any affiliate organizations in the holding company structure;
- A description of the method of reorganization under the bill;
- A statement that, upon consummation of the reorganization, certain assets and liabilities, including all deposit accounts of the reorganizing mutual state bank, will be transferred to the resulting stock state bank, which bank will immediately become a stock state bank subsidiary of the mutual holding company or subsidiary holding company;
- A summary of the expenses to be incurred in connection with the reorganization;
- Any other information required by the Superintendent.[138]

**Approval of application**

Within ten business days after receipt of an application for a mutual holding company reorganization, the Superintendent must either accept the application for processing, request additional information to complete the application, or return the application if it is substantially incomplete.

Within 180 days after an application is accepted for processing, the Superintendent must approve or disapprove the application and, if approved, impose any conditions the Superintendent determines appropriate. In approving or disapproving an application, the Superintendent, after conducting an appropriate examination or investigation, must consider whether:

[138] R.C. 1116.07.

(1) The reorganizing mutual state bank and any acquiree mutual bank will operate in a safe, sound, and prudent manner;

(2) The applicant has demonstrated that the reorganization plan is fair to the members of the reorganizing mutual state bank and any acquiree mutual bank;

(3) The interests of the reorganizing mutual state bank's depositors and creditors and the general public will not be jeopardized by the proposed reorganization into a mutual holding company;

(4) The proposed reorganization will result in a reorganizing mutual state bank or any acquiree state bank that has adequate capital, satisfactory management, and good earnings prospects;

(5) A stock issuance proposed in connection with the mutual holding company reorganization plan meets the standards established by the Superintendent and any applicable state and federal securities laws; and

(6) The reorganizing mutual state bank or any acquiree mutual bank has furnished all information required in the reorganization plan and any other information requested by the Superintendent regarding the proposed reorganization.[139]

If the application is approved, the Superintendent must – to effect the reorganization – forward the articles of incorporation to the Secretary of State for filing.[140]

**Membership rights**

A mutual holding company is required to confer:

--Upon existing and future depositors of the resulting stock state bank the same membership rights in the mutual holding company that were granted to depositors by the articles of incorporation or code of regulations of the reorganizing mutual state bank in effect immediately prior to the reorganization;

--Upon existing and future depositors of any acquiree mutual bank or any bank that is in the mutual form when acquired by the mutual holding company, the same membership rights in the mutual holding company that were granted to depositors by the articles of incorporation or code of regulations of the acquired mutual bank in effect immediately prior to the acquisition, provided that if the acquired mutual bank is

[139] R.C. 1116.06.

[140] R.C. 1116.08.

merged into another subsidiary state bank from which the mutual holding company draws members, the depositors of the acquired mutual bank must receive the same membership rights as the depositors of the subsidiary state bank into which the acquired mutual bank is merged;

--Upon the borrowers of the resulting stock state bank who are borrowers at the time of reorganization the same membership rights in the mutual holding company that were granted to them by the articles of incorporation or code of regulations of the reorganizing mutual state bank in effect immediately prior to the reorganization, but not any membership rights in connection with any borrowings made after the reorganization;

--Upon the borrowers of any acquiree mutual bank or any bank that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition, the same membership rights in the mutual holding company that were granted to them by the articles of incorporation or code of regulations of the acquired mutual bank in effect immediately prior to the acquisition, but not any membership rights in connection with any borrowings made after the acquisition. However, if the acquired mutual bank is merged into another bank from which the mutual holding company draws members, the borrowers of the acquired mutual bank must instead receive the same grandfathered membership rights as the borrowers of the subsidiary state bank into which the acquired mutual bank is merged.[141]

The bill prohibits a mutual holding company that acquires a bank in the stock form, other than a resulting stock state bank or an acquiree mutual bank, from granting any membership rights to the depositors and borrowers of the stock bank *unless* the stock bank is merged into a subsidiary stock state bank from which the mutual holding company draws its members. In that case, the depositors of the stock bank are to receive the same membership rights as other depositors of the subsidiary stock state bank into which the stock bank is merged.[142]

### Governance by board of directors

A mutual holding company and any subsidiary holding company are to be governed by a board of directors and in accordance with the articles of incorporation and code of regulations adopted in connection with the reorganization, or as amended in accordance with law or rule after the reorganization. The board of the mutual holding company and any subsidiary holding company must have at least five

[141] R.C. 1116.09(A).

[142] R.C. 1116.09(B).

members who, initially, are to consist of the board of directors of the reorganizing mutual state bank. These members, after the formation of the mutual holding company and any subsidiary holding company, are to continue to serve as directors for the balance of the terms to which they were elected.[143]

#### Reorganization plan: amendment or termination

A reorganization plan adopted by the board of directors of the reorganizing mutual state bank or any acquiree mutual bank may be amended by those boards as a result of any regulator's comments before any solicitation of proxies from the members to vote on the reorganization plan or, with the written consent of the Superintendent, at any later time. Additionally, it may be terminated by either board at any time before the meeting at which the members vote on the reorganization plan or, with the written consent of the Superintendent, at any later time.[144]

### Transfer of assets and liabilities

The bill states that all assets, rights, obligations, and liabilities of a reorganizing mutual state bank that are not expressly retained by the mutual holding company are to be transferred to the resulting stock state bank.[145]

### Deposit accounts

Under the bill, each person who holds a deposit account in a reorganizing mutual state bank or any acquiree mutual state bank immediately before the reorganization must receive, upon consummation of the reorganization, without payment, an identical deposit account in the resulting stock state bank or acquiree mutual state bank.[146]

### Conversion of mutual holding companies

The bill permits a mutual holding company organized under federal law or the laws of another state to convert to a mutual holding company organized under this chapter by submitting an application to, and obtaining the approval of, the Superintendent. State banks existing as of the date the bill takes effect (July 1, 2017) that are affiliates of a mutual holding company organized under federal law or the laws of

[143] R.C. 1116.10.

[144] R.C. 1116.13.

[145] R.C. 1116.11.

[146] R.C. 1116.12.

another state and that submit an application within one year after that date are eligible for an expedited review process.[147]

#### Powers and duties

Subject to all necessary regulatory notices or approvals, a mutual holding company organized under this chapter may:

--Acquire a bank organized in mutual or stock form by merger of such bank with the subsidiary stock state bank, interim subsidiary stock bank, or subsidiary stock holding company of the mutual holding company;

--Merge with or acquire another holding company provided that holding company has, as one of its subsidiaries, a subsidiary banking corporation;

--Exercise any power of, or engage in any activity permitted for, a mutual state bank;

--Engage directly or indirectly only in such activities as are permissible activities for bank holding companies under applicable state and federal law or regulations;

--Invest in the stock of a bank;

--Exercise any rights, waive any rights, or take or waive any other action with respect to any securities of any subsidiary stock state bank or subsidiary stock holding company that are held by the mutual holding company.[148]

### Surplus distribution

The bill permits the board of directors of a mutual holding company, by a majority vote of the directors, to divide equitably any surplus that is in excess of the amount required for the operations of the mutual holding company or to maintain the safety and soundness of the mutual holding company, and to distribute that surplus to the respective depositors of its subsidiary stock state banks in accordance with their membership rights. In addition, if the Superintendent determines that the surplus held by a mutual holding company is excessive, the Superintendent may order the board of directors to make such a distribution.[149]

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[147] R.C. 1116.16.

[148] R.C. 1116.18.

[149] R.C. 1116.19.

### Subsidiary holding company; issuance of securities

A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its subsidiary stock state bank, provided the subsidiary holding company is not formed and operated as a means of evading or frustrating the purposes of this chapter. Subject to the approval of the Superintendent, the subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date.

Any subsidiary stock state bank or subsidiary holding company may, with the prior approval of the Superintendent and subject to any rules the Superintendent may prescribe, issue one or more classes of securities, including one or more classes of common stock or preferred stock, and take any action with respect to the securities. However, the mutual holding company must hold at least 25% of the combined voting power of all classes of securities of the subsidiary stock holding company or stock state bank that have voting power in the election of directors of such stock state bank.

A subsidiary stock state bank or subsidiary stock holding company may issue, in connection with an employee stock option or other employee benefit plan or with the mutual holding company reorganization or subsequent to the reorganization, different classes of common stock to the mutual holding company and subsidiary stock state bank or subsidiary stock holding company. An issuance of securities may be made at the time of the mutual holding company reorganization or after it, and may be made in connection with the merger or acquisition of another bank whether organized in mutual or stock form.[150]

### Converting to a stock holding company

The bill permits a mutual holding company organized under this chapter to convert to a stock holding company by submitting an application to, and obtaining the approval of, the Superintendent.[151]

## Chapter 1117. – Bank Offices

### Notice of proposed banking office

Under existing law, a bank having its principal place of business in Ohio that proposes to establish a banking office must submit an application to the Superintendent of Financial Institutions. If the Superintendent accepts the application, the bank must

[150] R.C. 1116.20.

[151] R.C. 1116.21.

publish notice of its proposed banking office in a newspaper of general circulation in the county where the banking office is to be located and in the county where the bank currently maintains its principal place of business. The bill clarifies that the notice can be published "in print or in a comparable electronic format."[152]

Current law requires the Superintendent to consider certain factors in determining whether to approve a proposed banking office. The bill eliminates "the adequacy of the bank's paid-in capital" as one of the factors.[153]

### Relocation procedures

In the case of a bank proposing to relocate a banking office, current law provides the following:

(1) If the banking office is to be relocated *within the banking office's current service area*, the bank must notify the Superintendent and comply with the relocation procedures the Superintendent establishes.

(2) If the banking office is to be relocated *outside the banking office's current service area*, the bank must obtain the Superintendent's approval and comply with the banking office closing procedures established by the Superintendent.

The bill modifies (1), above, by replacing the italicized language with "within a one-mile radius of the banking office's current location." It modifies (2), above, by replacing the italicized language with "outside a one-mile radius of the banking office's current location."[154]

### Providing services to the bank's customers at another institution

Currently, a bank may, with the Superintendent's approval, contract with one or more other banks, savings banks, and savings associations to provide services to the contracting bank's customers at any of the offices of the other institutions as if those offices were offices of the contracting bank. In determining whether to approve such a contract, the Superintendent must consider certain factors. The bill eliminates "the adequacy of the paid-in capital" of both the contracting bank and the other institutions as one of those factors.[155]

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[152] R.C. 1117.02(B).

[153] R.C. 1117.02(D).

[154] R.C. 1117.04.

[155] R.C. 1117.05.

### Nonobservance of banking hours

Existing law generally permits the closing of a bank's banking office in the event of natural disaster, power failure, fire, strike, robbery, or any other reason the Superintendent approves, or in the event of the declaration of an emergency by the Governor. A banking office cannot remain closed for more than *48 consecutive hours, excluding legal holidays,* without obtaining the approval of the Superintendent or, in the case of a national bank, the Comptroller of the Currency.

Under the bill, a banking office cannot remain closed for more than "two consecutive days, excluding weekends and legal holidays," without the approval of the Superintendent. The approval of the Comptroller of the Currency is no longer required.[156]

## Chapter 1119. – Foreign Banks

The only revisions made in this chapter are conforming changes.

## Chapter 1121. – Superintendent's Powers

### Definitions

For purposes of this chapter, the definition of "**regulated person**" currently includes a director, officer, or employee of or agent for a bank or trust company or a controlling shareholder of a state bank, foreign bank, or trust company. The bill replaces *controlling shareholder of* with *person who controls a* state bank, foreign bank, or trust company. And it defines "**control**" as (1) power, directly or indirectly to direct the management or policies of a bank or (2) ownership or control of or power to vote 25% or more of any class of the bank's voting securities.[157]

### Duties re: salary schedule

The bill requires the Superintendent of Financial Institutions to prepare a salary schedule for all supervisory and management personnel, professional staff, examiners, and support personnel who are employees of the Division of Financial Institutions. All supervisory and management personnel, professional staff, and examiners who are paid from the Bank's Fund are to be compensated at rates not lower than the compensation rates at which supervisory and management personnel, professional

[156] R.C. 1117.07.

[157] R.C. 1121.01(B).

staff, and examiners of the FDIC with similar experience are compensated. The Banking Commission must approve the salary schedule.[158]

### Parity rules

Under existing law, the Superintendent must adopt rules granting state banks any right, power, privilege, or benefit possessed, by virtue of statute, rule, regulation, interpretation, or judicial decision, by certain entities, including (1) banks, savings associations, and savings banks doing business under authority granted by federal regulators or the regulatory authority of another state and (2) any other person having an office or other place of business in Ohio and engaging in the business of lending money, or buying or selling bullion, bills of exchange, notes, bonds, or other evidences of indebtedness with a view to profit.

The bill provides that, in addition to granting these rights and power to state banks, they also must be granted to trust companies. The bill also expands the list of entities described in (1), above, to include trust companies and the persons described in (2), above, to include the following: any other persons *engaging in the business of banking, offering financial products and services, soliciting or accepting deposits,* lending money, or buying or selling bullion, bills of exchange, notes, bonds, or other evidences of indebtedness *whether through an office or other place of business in Ohio or via the Internet, advertising, or other form of solicitation*.

The Superintendent is permitted by the bill to require a state bank or trust company that has acted in reliance on a rule adopted and later revoked or lapsed in accordance with the parity rules to bring its affected activities in compliance with the law. Unless the activities will or may result in harm to the bank or trust company as determined by the Superintendent, the bank or trust company must be granted a reasonable period of time, but not less than one year from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law.[159]

### Reduction of disadvantage to a state bank or trust company

If any regulation, interpretation, or guideline of the Office of the Comptroller of the Currency, FDIC, Federal Reserve Board, or the bank regulatory authority of another state puts an Ohio bank or trust company at a disadvantage to a national bank, the Superintendent is authorized under current law to adopt a rule to reduce or eliminate the disadvantage. The bill expands this provision to include any regulation, interpretation, or guideline of the Consumer Financial Protection Bureau, National

[158] R.C. 1121.02.

[159] R.C. 1121.05.

Credit Union Administration, or any other bank regulatory authority of the United States that puts an Ohio bank or trust company at a disadvantage to *any other type of financial institution.*

Pursuant to current law, any such rule is to be adopted under R.C. 111.15. If the rule is not revoked by the Superintendent, it lapses and has no effect 30 months after its effective date. The bill permits the Superintendent to adopt the rule under R.C. 111.15 for an additional 30-month period. It also permits the Superintendent to require a bank or trust company that has acted in reliance on a rule adopted and later revoked or lapsed to bring its affected activities in compliance with the law. Unless the activities will or may result in harm to the bank or trust company as determined by the Superintendent, the bank or trust company must be granted a reasonable period of time, but not less than one year from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law.[160]

## Examination authority

### Examination of bank records

Existing law requires the Superintendent, or any deputy or examiner appointed by the Superintendent, to examine the records and affairs of each bank at least once every 24-month cycle. The examination is to include a review of compliance with the law and other matters the Superintendent determines.

The bill clarifies that this examination authority applies to *state* banks and specifies that the examination is to also include a review of a bank's safety and soundness.[161]

### Examination of controlling shareholder

Current law also provides that an examination of a bank may include the examination of a controlling shareholder of the bank that is a bank holding company registered with the Federal Reserve. The bill replaces the term "controlling shareholder" with "person who, directly or indirectly, controls," and includes the examination of such a person that is (1) a savings and loan holding company or (2) a corporation that is not a savings and loan holding company, as its affairs relate to the bank.

In addition to the reasons specified under current law for conducting such an examination, the bill adds that an examination can be made if the Superintendent has reasonable cause to believe there is a significant risk of imminent material harm to any

[160] R.C. 1121.06.

[161] R.C. 1121.10.

subsidiary or nonbank affiliate as its affairs relate to the bank and the examination is necessary to fully determine the risk to the bank.[162]

#### Prohibited acts; remedies

Current law prohibits a regulated person from: (1) refusing to allow an authorized examination, (2) refusing to give information required by the Division of Financial Institutions in relation to an examination, or (3) providing false or misleading information in relation to an examination. Under the bill, state banks and trust companies are also prohibited from taking any of these actions. In addition, (3), above, is modified to require that the regulated person, bank, or trust company providing the false or misleading information *knows* that it is false or misleading.[163]

In the event of a violation of this prohibition, the Superintendent is currently authorized to:

- Issue a cease and desist order, a removal or prohibition order, or a suspension or temporary prohibition order. The bill also permits the Superintendent to enter into a memorandum of understanding or written agreement (see "**Agreements to prevent or correct violations or unsafe practices**," below) and to assess a civil penalty.

- Appoint a conservator. Under the bill, this applies only to a *state* bank.

- Initiate civil or criminal proceedings.[164]

#### Execution of documents

Currently, documents that are required by the Superintendent may be signed and sworn to on behalf of a bank by any officer authorized by the bank to do so. The bill applies this as well to trust companies, and specifies that the persons signing the documents are to be any officer *or director* authorized to do so by *the bank's or trust company's board of directors.*[165]

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[162] R.C. 1121.12 and 1121.13.

[163] R.C. 1121.16(A).

[164] R.C. 1121.16(B).

[165] R.C. 1121.17.

### Confidentiality of information; disclosure

Under current law, information leading to, arising from, or obtained in the course of an authorized examination is privileged and confidential. The bill, instead, requires the Superintendent and the Superintendent's agents and employees to keep privileged and confidential all information obtained by the Superintendent, agent, or employee as a result of or arising out of the examination or supervision of a bank or another authorized examination, from required reports, or because of their official position. The bill prohibits any person, including any person to whom the information is disclosed under the authority of this provision, from disclosing the information, except as specifically provided in this provision.[166]

The bill modifies current law with respect to the circumstances under which this information may be disclosed by the Superintendent or the Superintendent's agents and employees, as follows:

--The information may also be released to auditors, attorneys, or similar professionals retained by the bank or trust company to assist in conducting the business of the bank, or other person examined, in a safe and sound manner and in compliance with the law.

--The information may be released to law enforcement authorities *in connection with* criminal investigations *or referrals made by the Superintendent.*

--The information may also be released to other state and federal agencies or, in the case of a state bank, to the federal home loan bank to which the bank belongs, as the Superintendent determines necessary and appropriate, but only under such conditions and limitations as the Superintendent, in the Superintendent's sole discretion, may require.[167]

The bill adds – as an additional circumstance under which such information may be introduced into evidence – "when penalties or an enforcement action has been initiated by the Superintendent."[168] And it permits the Superintendent to adopt rules, in accordance with the Administrative Procedure Act, to permit a bank, trust company, or

[166] R.C. 1121.18(A).

[167] R.C. 1121.18(B).

[168] R.C. 1121.18(C).

other person to disclose the information in limited circumstances other than as otherwise specified by law.[169]

### Self-assessment privilege

The bill provides that a self-assessment report of a bank, any contents of the report, and any data, analyses, or other information gathered or developed as part of the self-assessment process, are privileged and not admissible or subject to discovery in any civil or administrative litigation, proceeding, or investigation. A "self-assessment report" includes (1) an evaluation of the bank's loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, and compliance with its policies and with federal or state statutory or regulatory requirements, and (2) any communication related to the report, including emails or telephone logs.

This self-assessment privilege granted to a bank and its affiliates applies regardless of whether a bank regulator or any other governmental authority in possession of a self-assessment report or any contents of it subsequently discloses it or any contents of it to a third party as required or permitted by state or federal law. A bank regulator or any other governmental authority in possession of a self-assessment report or any content of it is prohibited from disclosing the report or contents to any person in response to a public records request.[170]

### Report of condition and income

Each bank and trust company is currently required to report its condition and income to the Division of Financial Institutions at the times, in the form, and including the information prescribed by the Superintendent. The bill eliminates the penalty for failure to comply with this requirement.

The bill also eliminates the requirement that a bank or trust company maintain a summary of its most recent report of condition and income in each of its offices, post notice of the availability of the summary in each office, and make the summary available to the public without charge.[171]

### Criminal records checks: conditional approval

Existing law requires the Superintendent to request a criminal records check whenever the Superintendent's approval is required for a person to serve as an

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[169] R.C. 1121.18(E).

[170] R.C. 1121.19.

[171] R.C. 1121.21.

organizer, incorporator, director, executive officer, or controlling shareholder of a bank, or to otherwise have a substantial interest in or participate in the management of a bank. The bill allows the Superintendent to conditionally approve such a person, subject to receiving satisfactory results of the criminal records check.[172]

### Banks Fund

Current law creates the Banks Fund in the state treasury. Money in the Fund is used to defray the operational costs of the Division. The bill states that the money cannot be used for any other purpose.[173]

### Agreements to correct or prevent violations or unsafe practices

Under the bill, the Superintendent, to prevent or correct violations of law or rule or to prevent or correct unsafe or unsound practices, may enter into any of the following with a state bank, trust company, or regulated person:

(1) A memorandum of understanding;

(2) A written agreement enforceable by a cease and desist order or an order removing a regulated person from office or prohibiting a regulated person from further participation in the conduct of the affairs of the bank or trust company;

(3) Any other formal or informal agreement or understanding the Superintendent considers appropriate.[174]

### Orders relative to a regulated person

Currently, a regulated person who has been suspended, removed from office, or temporarily or otherwise prohibited from further participation in the affairs of a bank or trust company by order of the Superintendent cannot continue to hold any office or participate in any manner in the affairs of the bank or trust company, except as specifically permitted by the Superintendent pursuant to a modification of the order. Under the bill, this prohibition applies also in situations in which the suspension, removal, or prohibition order is issued by the bank regulatory authority of another state or the United States.[175]

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[172] R.C. 1121.23.

[173] R.C. 1121.30.

[174] R.C. 1121.31.

[175] R.C. 1121.33(D) and 1121.34(D).

If a regulated person is charged in any indictment or complaint authorized by a prosecuting attorney or a U.S. attorney with the commission of a felony involving dishonesty or breach of trust or involving a depository institution, the Superintendent is permitted by existing law to suspend the regulated person from office or temporarily prohibit the person's further participation in the conduct of the affairs of a bank or trust company, or both. The bill expands the crimes for which the Superintendent can take such actions. Under the bill, those crimes are "a felony or a crime involving an act of fraud, dishonest, breach of trust, theft, or money laundering involving a depository institution."[176]

### Administrative hearings; appeals

The bill specifies that administrative hearings authorized under current law are confidential, unless the Superintendent determines that holding an open hearing would be in the public interest. Within 20 days after service of the notice of a hearing, a respondent may file with the Superintendent a written request for a public hearing. A respondent's failure to file the request constitutes a waiver of any objections to a confidential hearing.

The bill also provides that, at certain administrative hearings the records of which may be the basis of an appeal to court, a stenographic record of the testimony and other evidence submitted is to be taken at the Division's expense. The record must include all of the testimony and other evidence, and any rulings on the admissibility of the evidence, that is presented at the hearing.

Under current law, a bank, trust company, or regulated person against whom the Superintendent issues an order upon the record of an administrative hearing may file a notice of appeal in the court of common pleas. The clerk of court must transmit a copy of the notice to the Superintendent, who must then file the record of the hearing. The bill instead requires the Superintendent, within 30 days after receiving the notice of appeal, to file a certified copy of the record with the clerk of court. In the event of a private hearing, the record of the hearing must be filed under seal.[177]

### Supervision order

Currently, if the Superintendent issues an order placing a bank or trust company under supervision and appointing a supervisor, the order may prohibit the bank or trust company from taking certain actions during the period of supervision without the prior approval of either the Superintendent or the supervisor. Those actions include

[176] R.C. 1121.34(B).

[177] R.C. 1121.38.

disposing of assets, lending any of its funds, and incurring debt. The bill authorizes the Superintendent to specify other prohibited actions in the order.[178]

### Publication of orders and agreements

Existing law requires the Superintendent to "publish and make available" to the public on a monthly basis:

(1) Any written agreement or other writing for which a violation may be enforced by the Superintendent;

(2) Any final (a) cease and desist order, (b) order removing or suspending a regulated person from office or prohibiting or temporarily prohibiting further participation in the affairs of a bank or trust company, (c) assessment of a civil penalty, or (d) supervision order;

(3) Any modification or termination of an agreement, other writing, or order made public in accordance with this provision.

This requirement does not apply, however, if the Superintendent determines that publishing a written agreement and making it available to the public would be contrary to the public interest. If the Superintendent determines that publishing a final order and making it available to the public would seriously threaten the safety and soundness of a bank or trust company, the Superintendent may delay the publication for a reasonable period of time.

The bill eliminates the requirement that any of this information be *published.* It also limits (1), above, to those written agreements enforceable by a cease and desist order or an order removing a regulated person from office or from further participation in the conduct of the affairs of the bank or trust company.[179]

### Order and subpoena powers

Under existing law, the Superintendent may summon and compel, by order or subpoena, witnesses to appear before the Superintendent, deputy superintendent, examiner, or attorney examiner, and testify under oath regarding the affairs of a bank or trust company or, in relation to matters concerning a state bank, foreign bank, or trust company, a regulated person.

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[178] R.C. 1121.41.

[179] R.C. 1121.43.

The bill replaces the term "attorney examiner" with "attorney," and authorizes the Superintendent to designate other persons to whom the witnesses may be required to appear before and testify.[180]

### Suits and court proceedings

Current law requires that all suits and court proceedings brought by the Superintendent be conducted by the Attorney General. Under the bill, they also may be conducted by a designee of the Attorney General.[181]

### Audit by independent auditor

The Superintendent is authorized under existing law to require a bank, when circumstances warrant, to have an independent auditor conduct agreed upon procedures prescribed by the Superintendent. The bill authorizes the Superintendent to do the same with respect to a trust company. It also defines "**independent auditor**" as an external, unaffiliated auditor who has a certified public accounting designation that qualifies the person to provide an auditor's report.[182]

### Proceedings when capital of bank is impaired

Current law sets forth the procedures that must be followed when the capital of a bank is impaired, including the assessment of shareholders. The bill repeals those provisions and, instead, provides for the following if a state bank is undercapitalized:[183]

--The Superintendent must notify the bank of the undercapitalization, and may require the bank to submit a written capital restoration plan within 45 days after the bank receives that notice, unless the Superintendent authorizes a longer period of time.

--A capital restoration plan is to specify:

- The steps the bank will take to become adequately capitalized;
- The levels of capital to be attained during the timeframe in which the plan will be in effect;
- The types and levels of activities in which the bank will engage; and

[180] R.C. 1121.47.

[181] R.C. 1121.48.

[182] R.C. 1121.50.

[183] R.C. 1121.52.

- Any other information the Superintendent may require.

--The Superintendent is required to approve a capital restoration plan if the Superintendent determines that the plan (1) is based on realistic assumptions and is likely to succeed in restoring the bank's capital and (2) would not appreciably increase the risk (including credit risk and interest-rate risk) to which the bank is exposed. If the plan is not approved, the Superintendent must notify the bank and require it to submit a revised plan within a specified time period. Upon serving that notice, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.

--If a state bank has submitted and is operating under an approved capital restoration plan:

- It is not to be required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless specifically required by the Superintendent to do so. A bank that is notified it must submit a new or revised plan must file a written plan within 30 days after receiving the notice, unless the Superintendent authorizes a different period of time.

- It may, after prior written notice to and approval by the Superintendent, amend the plan to reflect a change in circumstance. Until a proposed amendment is approved by the Superintendent, the bank must implement the plan in its current form.

--If an undercapitalized bank fails to submit a capital restoration plan within the designated period of time, upon the expiration of that period, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.

--If an undercapitalized bank fails, in any material respect, to implement a capital restoration plan, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.

--Lastly, the bill does not prohibit the Superintendent from requiring a state bank to submit a capital restoration plan at any other time the Superintendent considers necessary.

### Immunity of Superintendent and employees

Under current law, neither the Superintendent nor any employee of the Division is liable in any civil, criminal, or administrative proceeding for any mistake of judgment

or discretion in any action taken, or omission made in good faith. The bill extends this immunity to any agent or contractor of the Division and any supervisor appointed by the Superintendent under this chapter. It also clarifies that the action taken or omission made must be "within the scope of the person's official capacity as assigned by the Superintendent."[184]

## Chapter 1123. – Banking Commission

### Overview

In connection with the repeal of the chapters governing Savings and Loan Associations and Savings Banks, the bill eliminates the Savings and Loan Associations and Savings Banks Board.[185] It provides, however, for a transition period in which the memberships of the Board and the Banking Commission are combined. Thereafter, the membership of the Banking Commission is increased from seven to nine members.

### Transition period

On July 1, 2017 – the date the bill becomes effective – the Banking Commission is to additionally consist of the six members appointed to the Savings and Loan Associations and Savings Banks Board. Each such member is to serve until the end of the term for which the member was appointed. Likewise, the appointed members serving on the Banking Commission as of that date are to serve until the end of the term for which that member was appointed.

The bill's changes to the terms of office of the Banking Commission, and the qualifications for membership, first apply to the members appointed on or after July 1, 2017.[186]

### Commission membership and qualifications

The bill increases the membership of the Banking Commission from seven to nine members. One of the members is the Deputy Superintendent for Banks, and the remaining eight members are to be appointed by the Governor, with the advice and consent of the Senate.

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[184] R.C. 1121.56.

[185] R.C. 1181.16 and 1181.17, both repealed.

[186] Section 3.

After the second Monday in January of each year, the Governor is to appoint two members. Members serve four-year terms commencing on February 1 and ending on January 31. No appointee may serve more than two consecutive full terms.

At least six of the eight appointed members must be, at the time of appointment, executive officers of state banks and all of the appointed members must have banking experience as a director or officer of a bank, savings bank, or savings association insured by the FDIC, a bank holding company, or a savings and loan holding company. The membership must be representative of the banking industry as a whole, including representatives of banks of various asset sizes and ownership structures, as determined by the Governor after consultation with the Superintendent of Financial Institutions. No one who has been convicted of, or has pleaded guilty to, a felony involving an act of fraud, dishonesty, breach of trust, theft, or money laundering can hold office as a member.

The members do not receive a salary but do receive payment for their expenses incurred in the performance of their duties. The Governor may remove any of the eight appointed members whenever in the Governor's judgment the public interest requires removal.[187]

### Duties

The Commission retains its current responsibilities, but one more duty is added. Under the bill, the Commission must also consider and determine whether to approve the salary schedule proposed by the Superintendent for all supervisory and management personnel, professional staff, examiners, and support personnel who are employees of the Division of Financial Institutions.[188]

## Chapter 1125. – Liquidations and Conservatorships

### Application

The bill clarifies that this chapter applies to *state* banks.

### Voluntary liquidations: notice publication requirements

Currently, if the Superintendent of Financial Institutions consents to a voluntary liquidation, the bank must publish a notice of the liquidation in a newspaper of general circulation in the county in which the bank's principal place of business is located. The

[187] R.C. 1123.01.

[188] R.C. 1123.03. See also R.C. 1121.02.

bill clarifies that the notice can be published in print or in a comparable electronic format.[189]

### Conservatorships: powers

Existing law sets forth the powers of a conservator while under the supervision of the Superintendent. One of those powers is to sell assets, compromise any debt or claim due the bank, discontinue any pending action, and implement a restructuring of the bank, if done within the ordinary course of business of the bank and according to ordinary business terms. The bill adds that is also must be done *in good faith*.[190]

### Involuntary liquidations

#### Notice publication requirements

Currently, upon the appointment of a receiver, the receiver must cause notice of the claims procedure to be published in a local newspaper of general circulation. The bill clarifies that the notice can be published in print or in a comparable electronic format.[191]

#### Payment of claims

Existing law sets forth the order in which claims against a bank's estate and expenses are to be paid. Included are wages and salaries of officers and employees earned during the one-month period preceding the date of the bank's closing in an amount not exceeding $1,000 per person. The bill adds "commissions, including vacation, severance, and sick leave pay," of those officers and employees.[192]

#### Destruction of records

Under current law, a receiver may destroy the records of the bank, subject to the approval of the court, after the receiver determines there is no further need for them. The bill adds that the records are to be destroyed in the manner authorized for banks to destroy their records.[193]

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[189] R.C. 1125.04.

[190] R.C. 1125.12(A)(9).

[191] R.C. 1125.23.

[192] R.C. 1125.24.

[193] R.C. 1125.30, referring to R.C. 1109.69.

## Chapter 1133. – Societies for Savings

The bill repeals this chapter.[194]

## Chapters 1151. to 1157. – Savings and Loan Associations

The bill repeals these chapters.

## Chapters 1161. to 1165. – Savings Banks

The bill repeals these chapters.

## Chapter 1181. – Division of Financial Institutions

### Qualifications of the Superintendent

Current law requires the Superintendent of Financial Institutions, as the chief executive officer of the Division of Financial Institutions, to have at least five years of experience in the financial services industry or in the examination or regulation of financial institutions. Under the bill, the Superintendent must have at least one of the following:

(1) At least five years of experience as a senior level officer in a federally insured depository institution, bank holding company, or savings and loan holding company or as a senior level manager in the business of auditing or providing professional advice to those institutions on issues related to safety and soundness;

(2) At least five years of experience as a senior level supervisor in the examination or regulation of the safety and soundness of federally insured depository institutions; or

(3) At least a total of five years of experience in any combination of the positions described in (1) and (2), above.[195]

### Qualifications of the deputy superintendents

The bill eliminates the requirement that the Superintendent appoint a Deputy Superintendent for Savings and Loan Associations and Savings Banks. With respect to the Deputy Superintendent for Banks and the Deputy Superintendent for Credit Unions, current law requires each one to have at least five years of experience in that

[194] R.C. 1133.01 to 1133.16.

[195] R.C. 1181.01(A).

particular industry or at least five years of experience in the examination or regulation of banks, savings and loan associations, savings banks, or credit unions.

Under the bill, each deputy superintendent must have at least one of the following:

(1) At least five years of experience in that particular industry as (a) a senior level officer, (b) a senior level manager in the business of auditing or providing professional advice on issues related to safety and soundness, or (c) a senior level supervisor in the examination or regulation of safety and soundness;

(2) At least five years of experience as a senior supervisor in the examination or regulation of banks, savings and loan associations, savings banks, or credit unions; or

(3) At least a total of five years of experience in any combination of the positions described in (1) and (2), above.[196]

With respect to the Deputy Superintendent for Consumer Finance, current law requires the Deputy to have at least five years of experience in one or more of the consumer finance companies regulated by the Division or in the examination or regulation of banks, savings and loan associations, savings banks, credit unions, or consumer finance companies. Under the bill, the Deputy must have at least one of the following:

(1) At least five years of experience as an owner, officer, or senior level manager of one or more consumer finance companies;

(2) At least five years of experience as a senior level supervisor in the examination or regulation of consumer finance companies; or

(3) At least at total of five years of experience in any combination of the positions described in (1) and (2), above.[197]

Lastly, the bill requires that these deputy superintendents serve in the classified civil service, rather than the unclassified civil service, as is required under current law.[198]

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[196] R.C. 1181.01(B).

[197] R.C. 1181.01(C).

[198] R.C. 1181.01(D).

### Employees; bonds

In addition to the employees authorized under current law, the bill permits the Superintendent to appoint and employ such professionals and agents as the prompt execution of the duties of the Superintendent's office requires.[199]

Currently, the Superintendent must require a bond of each employee of the Division, conditioned on the faithful performance of each employee's duties, in an amount not less than $5,000 that the Superintendent determines to be acceptable. The bill extends this bonding requirement to each agent of the Division.[200]

### Immunity of Superintendent and employees

Under existing law, neither the Superintendent nor any employee of the Division is liable in any civil, criminal, or administrative proceeding for any mistake of judgment or discretion in any action taken, or any omission made by the Superintendent or employee in good faith. The bill extends this immunity to agents and contractors of the Division. It also limits it to actions taken or omissions made in good faith *within the scope of the person's official capacity as assigned by the Superintendent*.[201]

### Conflicts of interest

Current law prohibits the Superintendent and any other employee of the Division from having certain connections to, or affiliations with, banks, savings and loan associations, savings banks, credit unions, or consumer finance companies under the supervision of the Superintendent, including: (1) being interested, directly or indirectly, in any such financial institution or company and (2) owning an equity interest in any such financial institution or company. The bill does the following:

--It clarifies that the prohibition applies with respect to *state* banks.

--It removes the reference to savings and loan associations and savings banks and adds trust companies.

--With respect to (1), above, it replaces "being interested" in with *having a business or investment interest* in;

--In (1) and (2), above, it adds *or any affiliate of* any such financial institution or company;

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[199] R.C. 1181.02.

[200] R.C. 1181.03.

[201] R.C. 1181.04.

--It amends the definition of "consumer finance company" to include only those persons who are licensed or registered under the relevant statutes administered by the Superintendent, rather than any person *required to be* licensed or registered under those statutes, as provided in current law.[202]

Current law permits, under certain circumstances, an employee to retain the ownership of or beneficial interest in the securities of a financial institution or consumer finance company under the supervision of the Division. The employee must provide written notice of the retention and, thereafter, is disqualified from participating in any decision or examination that may affect the issuer of the securities. If the disqualification impairs the employee's ability to perform the employee's duties, the employee may be ordered to divest himself or herself of the ownership or beneficial interest. The bill adds that, as an alternative, the employee may be ordered to resign.[203]

Current law specifies that, for purposes of this provision, the interest of an employee's spouse or dependent child arising through the ownership or control of securities is considered the interest of the employee, unless certain conditions are met. Under the bill, the employee *must demonstrate to the satisfaction of the Superintendent* that the conditions are met.[204]

### Financial Institutions Fund

The existing Financial Institutions Fund receives assessments on the Banks Fund, the Savings Institutions Fund, the Credit Unions Fund, and the Consumer Finance Fund in accordance with procedures prescribed by the Superintendent and approved by the Director of Budget and Management. All operating expenses of the Division are to be paid from the Financial Institutions Fund.

The bill specifies that money in the Fund can be used *only* for that purpose. It also eliminates the reference to the Savings Institutions Fund (see below).[205]

### Office space for the Superintendent

The state is currently required to furnish the Superintendent suitable facilities for conducting business at the seat of government and in any other city of the state where it

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[202] R.C. 1181.05(A) and (B).

[203] R.C. 1181.05(D) and (E).

[204] R.C. 1181.05(F)(1).

[205] R.C. 1181.06.

is necessary to keep a resident examiner. The bill replaces "in any other city of the state" with *in any other location within the state*.[206]

### Seal of the Superintendent

The bill eliminates the requirement that the seal of the Superintendent be one and three-fourths inches in diameter.[207]

### Copies of records as evidence

Existing law provides that copies of certificates or records in the office of the Superintendent that are duly certified by the Superintendent and authenticated by the Superintendent's seal of office constitute evidence in any state court of every matter that could be proved by producing the original. Under the bill, those certificates and records may, in the absence of the Superintendent, be certified by a deputy superintendent having jurisdiction over the records.[208]

### Savings and Loan and Savings Banks Board; Savings Institutions Fund

The bill repeals the sections that establish the Savings and Loan Associations and Savings Banks Board and set forth the Board's powers and duties. It also terminates the Savings Institutions Fund.[209]

### Regulation of consumer finance companies

Under existing law, the Deputy Superintendent for Consumer Finance is the principal supervisor of consumer finance companies. In that position, the Deputy is responsible for conducting examinations under the specific statutes regulating consumer finance companies. The bill expressly includes the Ohio Credit Services Organization Act (R.C. Chapter 4712.) as one of those statutes.[210]

### Introduction into evidence or disclosure of nonpublic information

The Superintendent is currently permitted to introduce into evidence or disclose information that otherwise is deemed privileged, confidential, or not a public record,

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[206] R.C. 1181.07.

[207] R.C. 1181.10.

[208] R.C. 1181.11.

[209] R.C. 1181.16, 1181.17, and 1181.18.

[210] R.C. 1181.21.

provided the Superintendent does so as permitted under the relevant statute or in specified circumstances. Under the bill, those circumstances are as follows:

(1) In connection with any civil, criminal, or administrative investigation or examination conducted by the Superintendent or by any other financial institution regulatory authority, any state or federal attorney general or prosecuting attorney, or any local, state, or federal law enforcement agency;

(2) In connection with any civil or criminal litigation or administrative enforcement action initiated or to be initiated by the Superintendent in furtherance of the powers and duties imposed upon the Superintendent;

(3) To administer licensing and registration through the Nationwide Mortgage Licensing System and Registry.[211]

The bill permits the Superintendent to seek a protective order or enter into an agreement to protect any such privileged, confidential, or other nonpublic information provided beyond the intended recipient.[212]

The bill also states that all reports and other information made available under this chapter remain the property of the Superintendent. Except as otherwise provided, a person, agency, or other authority to whom the information is made available, or any officer, director, or employee of that person, agency, or other authority, cannot disclose the information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or entity.[213]

Lastly, the bill states that the Superintendent is not to be considered as having waived any privilege applicable to any information by transferring that information to, or permitting it to be used by, any federal or state agency or any other person as permitted by this chapter or R.C. Chapter 1121. (Superintendent's Powers).[214]

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[211] R.C. 1181.25(A). (For the definition of "Nationwide Mortgage Licensing System and Registry," see R.C. 1322.01, not in the bill.)

[212] R.C. 1181.25(B).

[213] R.C. 1181.25(C).

[214] R.C. 1181.25(D).

## Other related changes made by the bill

### Authority to govern in the absence of the Superintendent

Current law provides that, in the absence of the Superintendent of Financial Institutions, the Director of Commerce may perform or exercise the powers or duties vested by law in the Superintendent. The bill replaces the Director with the Deputy Superintendent for Banks, with respect to the laws governing banking, and with the Deputy Superintendent for Credit Unions, with respect to the laws governing credit unions.[215]

### Uniform Depository Law: public depository eligibility

Currently, a bank or savings and loan association is not eligible to receive public deposits if the institution, or any of its directors, officers, employees, or controlling persons, is currently a party to an active final or temporary cease-and-desist order issued by the Superintendent. The bill expands this restriction to any national bank, federal savings association, or bank, savings bank, or savings and loan association doing business under the authority granted by the regulatory authority of another state, if the institution or any of its directors, officers, employees, or controlling persons is currently a party to any active enforcement order issued by a federal regulatory authority or the regulatory authority of another state.[216]

### Corrections and updates

The bill removes outdated references (such as references to "Federal Savings and Loan Insurance"), eliminates provisions that are no longer applicable, and makes corrections required by the termination of the Office of Thrift Supervision and the resulting transfer of regulatory authority over federal savings associations to the Office of the Comptroller of the Currency, as well as other corrections.

### Conforming changes in the Revised Code

The bill makes numerous conforming changes in other statutes, such as the Uniform Depository Law (R.C. Chapter 135.), due primarily to the elimination of "savings and loan associations" and "savings banks" as well as the laws governing those institutions.

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[215] R.C. 121.07.

[216] R.C. 135.032 and 135.321.

## Chart locating renumbered sections

| UNDER CURRENT LAW | UNDER THE BILL |
|---|---|
| 1103.01 | 1113.01 |
| 1103.06 | 1113.04 |
| 1103.08 | 1113.12 |
| 1103.09 | 1113.13 |
| 1103.11 | 1113.11 |
| 1103.13 | 1113.14 |
| 1103.14 | 1113.15 |
| 1103.15 | 1113.16 |
| 1103.16 | 1113.17 |
| 1103.21 | 1117.07 |
| 1113.01 | 1113.02 |
| 1109.44(E) | 1109.441 |

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 04-20-16 |

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