DEPARTMENT OF COMMERCE

New Banking Law

- Effective January 1, 2018, 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 are to operate.
- Eliminates the separate laws regulating savings and loan associations and savings banks.
- Makes numerous conforming changes throughout the Revised Code.

Good Funds Law: disbursements from escrow accounts

- With respect to residential real property, increases – from $1,000 to $10,000 – the maximum amount that can be disbursed by an escrow or closing agent from an escrow account when the funds necessary for the disbursement are in the form of cash or check.
- Removes the requirement that certain electronically transferred funds be "via the real-time gross settlement system provided by the Federal Reserve Bank" and instead permits those funds be "any other electronically transferred funds."

Bedding and toy tests

- Explicitly authorizes private laboratories that are designated by the Superintendent of Industrial Compliance to be used for tests and analysis of bedding and stuffed toys.

State Fire Marshal vacancy

- Eliminates certain notification requirements by the State Fire Council when a vacancy occurs in the position of the State Fire Marshal.
- Eliminates the requirement that the Council make a list of all qualified applicants for the position of State Fire Marshal when a vacancy occurs.

Boiler certificates and fees

- Eliminates the requirement of a satisfactory inspector's report for the Superintendent of Industrial Compliance to issue or renew a certificate of operation for certain

newly installed or operating power boilers, high pressure, high temperature water boilers, low pressure boilers, and process boilers.

- Maintains the inspection report requirement for certain boilers used to control corrosion.

- Requires the Superintendent, in considering whether to issue or renew a certificate, to find that the owner or user of boilers used to control corrosion kept certain records and did not operate the boiler at pressures exceeding the safe working pressure.

- Replaces the Director of Commerce with the Superintendent of Industrial Compliance as the person who may increase the fees for licensing, inspections, and issuing certificates.

- Authorizes the Superintendent to establish fees to pay the costs necessary to fulfill the duties of the Division of Industrial Compliance in relation to boilers.

Elevator fees

- Limits the authority of the Division of Industrial Compliance to charge fees for elevator, escalator, and moving walk inspections to attempted inspections by a general inspector that failed through no fault of the inspector or the Division; eliminates the fee for successful inspections.

- Requires any person who fails to pay a certificate of operation fee within 45 days after the certificate's expiration to pay a late fee equal to 25% of the inspection fee.

- Allows the Superintendent of Industrial Compliance to increase the inspection fees and the fees for issuing and renewing certificates of operation.

- Allows the Superintendent to establish fees to pay the costs of the Division incurred in administering and enforcing the elevator laws.

Real estate brokers and salespersons

- Clarifies that licensed real estate brokers and salespersons are not subject to the Standard Renewal Procedure Law.

Fireworks license moratorium

- Extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses to September 15, 2018.

Liquor permits

- Creates the A-5 liquor permit to allow a person to manufacture and sell ice cream containing between 0.5% and 6% alcohol by volume.

- Modifies the following conditions for certain community entertainment districts in which a D-5j liquor permit may be issued:

  --Decreases the minimum population of a municipal corporation in which the district may be located from 5,000 to 3,000; and

  --Increases the minimum investment in development and construction in the district from $100 million to $150 million.

- Expands the eligibility criteria for the issuance of an F-9 liquor permit by allowing it to be issued to a nonprofit that operates, or manages entertainment for, a city park if:

  --The park property is the subject of an agreement between a municipal corporation, a national nonprofit that is a foundation, and an Ohio-based nonprofit; and

  --The agreement is for the purposes of hosting outdoor performing arts events or orchestral performances.

- In conjunction with the F-9 permit eligibility expansion, exempts a person attending an outdoor performing arts event or orchestral performance from the Opened Container Law if certain conditions are met.

Tasting samples of alcohol

- Allows casinos (D-5n liquor permit) and restaurants in casinos (D-5o liquor permit) to offer free tasting samples of beer, wine, or spirituous liquor if certain conditions apply.

Reports by H liquor permit holders

- Requires a person who transports beer or intoxicating liquor into Ohio for delivery (H liquor permit holders) to an individual or entity that is not a liquor permit holder to submit a monthly report to the Division of Liquor Control.

- Requires the report to include specified information relating to the delivery, including the name and address of each consignor, the consignee of the beer or intoxicating liquor, and the date of delivery.

- Prohibits a person from violating the reporting requirements, and allows the Liquor Control Commission to suspend or revoke any liquor permit issued to the violator.

Merger of Manufactured Homes Commission into Department

- Abolishes the Manufactured Homes Commission and transfers its duties to the Department.

- Creates the Manufactured Homes Advisory Council to advise the Director of Commerce concerning the Director's duties in the regulation of manufactured housing in Ohio.

Removal of manufactured homes from manufactured home parks

- Modifies procedures regarding the removal of abandoned or unoccupied manufactured homes, mobile homes, or recreational vehicles.

- Requires the manufactured home park operator to provide a person that has an outstanding interest in the home or vehicle a written notice to remove it from the park or arrange for its sale within 21 days from the delivery of the notice.

- Permits the park operator to remove the home or vehicle from the manufactured home park, or sell, destroy, or transfer ownership of the home or vehicle, if a person does not come forward with an outstanding interest.

- Requires the park operator to submit a notarized affidavit (1) listing the value of an abandoned home or vehicle and (2) signed by the auditor confirming the value, and establishes procedures if there is a disagreement over the value.

- Permits the park operator to remove the home or vehicle from the park and potentially sell, destroy, or transfer ownership if a probate court does not grant administration of a deceased resident's estate within 90 days from eviction, reduced from one year under former law.

- Establishes procedures to identify and notify persons with an interest in the home or vehicle of a deceased resident.

- Revises the required contents of the writ of execution.

- Eliminates the requirement that a lienholder consent to the transfer of title, if the judgment is executed by transfer of title.

- Provides immunity for a sheriff, police officer, constable, or bailiff for damage caused by the park operator's removal of the home, vehicle, or personal property

from the premises, or any damage to the home, vehicle, or personal property when the home or vehicle remains abandoned or stored in the park.

Nuisances in manufactured home parks

- Authorizes the Division of Industrial Compliance to contract with a local board of health to permit the Division to exercise the board's authority to abate and remove any abandoned or unoccupied home or vehicle that constitutes a nuisance and is located in a manufactured home park.

Manufactured home installation standards

- Removes the option of the Division to adopt, as the uniform standards for the design and installation of manufactured housing, manufacturers' standards that are equal to or not less stringent than the federal model standards.

Manufactured home inspections

- Permits a township, municipal corporation, or county that does not have a certified building department regarding manufactured homes to designate the certified building department of another political subdivision to perform manufactured home inspection duties for it.

- Establishes fees for manufactured home inspector certification and certification renewal.

Condition of manufactured home park

- Requires the park operator to ensure that all buildings, lots, streets, walkways, homes, and other facilities located in the park are maintained in satisfactory condition at all times.

New Banking Law

(Sections 130.21 to 130.27)[19]

Overview

Effective January 1, 2018, the act enacts a new Banking Law that regulates banks, savings and loan associations, and savings banks under the same statute. That statute 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 are to 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 act.

Because, unlike banks, the ownership structure of a savings and loan association or savings bank may *not* be represented by shares of stock, the act 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. As such, some of the act's provisions expressly apply to "stock state banks" and their "shareholders," while others apply to "mutual state banks" and their "members." In those provisions that apply to both types of state banks, a reference to "or members" is added wherever "shareholders" are addressed. Other language to recognize the differences between stock state banks and mutual state banks is added, such as what constitutes "capital."

The act modifies a number of provisions of ongoing law to make them expressly apply only to *state* banks. Many of those provisions are noted in this portion of the analysis, but, due to the extensive nature of the act's changes, a complete list is not included.

While the new Banking Law takes effect January 1, 2018, a few provisions take effect September 29, 2017.[20]

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[19] Overlapping provisions relative to the Banking Commission, the Banks Fund, assessments and examination fees, and bank examination records appear in Section 101.01 of the act; consequently, they will be harmonized. The changes will be described in this portion of the analysis only, however.

[20] See Section 130.26.

Organization of the analysis

This portion of the 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 act in the order in which they are found in that chapter. If any section of the law regulating banks (R.C. Chapters 1101. to 1127. and 1181.) remains unchanged, it is not included in the act and, therefore, not mentioned in this analysis.

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

Chapter 1101. – General Provisions

Definitions added or modified by the act

(R.C. 1101.01)

"**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.

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

"**Capital**":

--With respect to a **stock state bank**, "capital" means the sum of the bank's (1) paid-in capital and surplus relating to common stock, (2) paid-in capital and surplus relating to preferred stock (to the extent permitted by the Superintendent of Financial Institutions), (3) undivided profits, and (4) the proceeds of the sale of debt securities and other assets and reserves (to the extent permitted by the Superintendent).

--With respect to a **mutual state bank**, "capital" means (1) retained earnings or (2) at the discretion of the Superintendent, any other form of capital, subject to any applicable federal and state laws.

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

"**Deposit**" has the same meaning as in 12 C.F.R. 204.2.

"**Entity**" has the same meaning as in the General Corporation Law.[21]

"**Mutual holding company**" means (1) a mutual state bank or an affiliate of a mutual state bank reorganized in accordance with the act to hold all or part of the shares of the capital stock of a subsidiary state bank or (2) a mutual holding company organized in accordance with 12 U.S.C. 1467a(o) that has converted to a mutual holding company under the act.

"**Mutual state bank**" means a state bank without stock that has governing documents consisting of articles of incorporation and code of regulations adopted by its members and bylaws adopted by its board of directors.

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

"**Remote service unit**" means an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money.

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

"**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 act, elects to operate as a savings and loan association.[22]

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

"**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.

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[21] See R.C. 1707.01, not in the act.

[22] See also R.C. 1109.021.

"**State bank**" means a bank doing business under authority granted by the Superintendent. The term also includes a state bank that, in accordance with the act, elects to operate as a savings and loan association.[23]

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

"**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.

Purposes of the Banking Law

(R.C. 1101.02)

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

Transition

(R.C. 1101.03(E) and (F))

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 January 1, 2018 (the date the new Banking Law 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.

Additionally, the act 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 procedures set forth in the act.[24]

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[23] See also R.C. 1109.021.

[24] See also R.C. 1109.021.

Enforceability

(R.C. 1101.05)

The act generally provides that the new Banking Law (1) is enforceable only by the Superintendent, the Superintendent's designee, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, or, with respect to the laws governing crimes and prohibited activities (R.C. Chapter 1127.), a prosecuting attorney, and (2) does not create or provide a private right of action or defense for or on behalf of any party other than the Superintendent or the Superintendent's designee.

Designation or name of business

(R.C. 1101.15(A) and (C))

Under ongoing 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 act modifies (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.

Ongoing 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 act extends that prohibition to trust companies.

Authority to accept deposits or transact banking business in Ohio

(R.C. 1101.16)

Prior law prohibited any person from soliciting, receiving, or accepting deposits in Ohio, except:

- A bank;
- A "domestic association," which is defined as an Ohio chartered savings and loan or a federally chartered savings association that has its home office in Ohio;

- A "savings bank," which is defined as a corporation that has its home office in Ohio, is organized for the purposes of receiving deposits and raising money to be loaned to its members or others, and maintains at least 60% of its total assets in certain housing-related and other investments;

- A credit union organized under Ohio law; and

- As otherwise permitted by law, including by means of interstate acquisitions, the establishment or acquisition of banking offices or branches in Ohio, and mergers.

The act instead prohibits any person from soliciting, receiving, or accepting "money or its equivalent for deposit as a business" in Ohio, except:

- A state bank;

- An entity doing business as a bank, savings bank, or savings association under authority granted by a bank regulatory authority of the United States, another state, or another country, which institution is authorized to accept deposits in Ohio;

- A credit union organized under Ohio law.

A bank or bank holding company incorporated under the laws of another state or having its principal place of business in another state was prohibited under prior law from (1) soliciting, receiving, or accepting deposits in Ohio unless it had established or acquired a banking office in accordance with Ohio law or (2) transacting any banking business of any kind in Ohio other than lending money, trust business in accordance with Ohio law, or through or as an agent pursuant to Ohio law. The act removes this prohibition.

Additionally, a depository institution outside Ohio was formerly prohibited 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 act removes this prohibition.

Chapter 1103. – General Governance

Application

R.C. Chapter 1103. is amended to clarify that it applies to *state* banks.

Name of bank; misleading use of name

(R.C. 1103.07(A) and (E) and 1103.99)

Under the act, 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.

The act 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 or cause another person to be misled into believing that the person issuing the advertisement, solicitation, promotional, or other material is associated or affiliated with the bank, *unless* the person has obtained the express written permission of the bank. A bank injured by a violation of this prohibition may bring an action for damages, a temporary restraining order, an injunction, or any other available remedy. Additionally, a person who violates the prohibition is subject to a civil penalty of up to $10,000 for each day the violation is committed, repeated, or continued.

Requirement of signatures

(R.C. 1103.19)

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.

Chapter 1105. – Board of Directors

Application

R.C. Chapter 1105. is amended to indicate the provisions that apply only to *state* banks.

Classes of directors

(R.C. 1105.01(C))

Ongoing law permits the classification of directors into either two or three classes. Under prior law, each class had to consist of at least three directors. The act reduces the minimum number of directors to two.

Residency requirement

(R.C. 1105.02(A)(1)(b))

The act eliminates the requirement that a majority of the directors be residents of Ohio or live within 100 miles of Ohio.

Outside directors

(R.C. 1105.02(A)(1)(b))

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

Disqualification

(R.C. 1105.02(B))

Prior law prohibited any person who had been convicted of, or had pleaded guilty to, a felony involving dishonesty or breach of trust from taking office as a director. The act 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 act, 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 was a misdemeanor or minor misdemeanor or the equivalent of either.

Meetings

(R.C. 1105.08)

Law modified by the act permits meetings of the board or a committee of the board to be held "in any manner permitted by the laws of this state," including by communications equipment, if all persons participating can communicate with each of the others.

Removal of directors; vacancies

(R.C. 1105.10)

In addition to the reasons stated in ongoing law, the act 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.

The act adds that a vacancy occurs if a director is removed, as well as if the director dies or resigns, as is provided in ongoing law. The act 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 duly appointed or elected.

Further, the act 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.[25]

Personal liability

(R.C. 1105.11)

Under prior law, a director of a bank who knowingly violated or permitted any of the officers, agents, or employees of the bank to violate any provision of the Banking Law was liable personally and individually for all damages the bank, its shareholders, or any other person sustained because of the violation. The act 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 due to a violation of or failure to comply with any provision of the Banking Law, or the rules adopted under the Law, including any civil money penalties, *unless* it can be shown (1) that the director, officer, employee, or other party knowingly violated or failed to comply with that provision of law or (2) with respect to a director's liability, that the director knowingly permitted any of the officers, employees, or other parties to violate or fail to comply with any such provision. However, this does not deprive a director of the defenses set forth in the General Corporation Law.[26]

[25] See R.C. 1701.62, not in the act.

[26] See R.C. 1701.59, not in the act.

Chapter 1107. – Capital and Securities

Application

R.C. Chapter 1107. is amended to clarify that it applies to *state* banks.

Definition of "treasury shares"

(Repealed R.C. 1107.01)

The act eliminates the definition of "treasury shares."

Debt securities

(R.C. 1107.05(C))

Under prior law, the terms of any option granted in connection with the issuance of debt securities, or any right to convert debt securities to shares, could not 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 act removes this provision.

Bank shares: retired and canceled; assessments

(R.C. 1107.07)

The act eliminates the provisions of 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.

Employee stock options; granting of shares

(R.C. 1107.09)

Ongoing law permits a bank, with the approval of the board of directors, the holders of a majority of the bank's voting shares, and the Superintendent of Financial

Institutions, 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 act 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 act, 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." "Other parties" is defined as any person that has provided or will provide a service or a benefit to the bank, as determined by the board of directors.

Pre-emptive rights

(R.C. 1107.11(C))

The act specifies that pre-emptive rights with respect to shares issued by a stock state bank chartered on or after January 1, 2018 (the date the new Banking Law takes effect), are to be governed by the General Corporation Law.[27]

Bank's purchase of its own shares

(R.C. 1107.13)

Prior law listed the circumstances under which a bank could purchase its own shares. The act eliminates that list and, instead, permits a stock state bank to purchase its own shares (1) with the prior written approval of the Superintendent and (2) in accordance with the General Corporation Law.[28]

Dividends and distributions

(R.C. 1107.15)

The act 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.

Chapter 1109. – Bank Powers

Application

R.C. Chapter 1109. is amended to clarify the provisions that apply only to *state* banks.

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[27] See R.C. 1701.15, not in the act.

[28] See R.C. 1701.35, not in the act.

General powers

(R.C. 1109.02)

The act 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, other than those dealing with interest rates, regardless of the date the corresponding parity rule adopted by the Superintendent of Financial Institutions takes effect. If a state bank intends to take any such action before the adoption of the corresponding parity rule, the bank must provide the Superintendent with prior written notice of the action and the basis for the action. Within 90 days after receipt of that notice, the Superintendent may prohibit the bank from taking the action if the Superintendent determines it would be unsafe or unsound for the bank.

Election to operate as a savings and loan association

(R.C. 1109.021)

Under the act, a state bank may elect to operate as a savings and loan association by filing a written notice of that election with the Superintendent. 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 twelve months. A state bank may revoke its election at any time by submitting written notice to the Superintendent.[29]

Good faith reliance

(R.C. 1109.04(A))

The act provides that a bank may, in good faith, rely (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.

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

Electronic statements and notices

(R.C. 1109.04(B) and (C))

Under the act, a bank may – with the customer's consent – provide electronically any statement, notice, or report required to be provided customers under R.C. Chapter 1109. 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 R.C. Chapter 1109. A bank's consent may be obtained electronically or in writing.

Deposit contracts and accounts

(R.C. 1109.05(B) and (C))

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

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

Prior law also required a bank, for each deposit account, to send to the customer a written report of the customer's account. Under the act, 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."

Public deposits

(R.C. 1109.05(E)(2))

The act 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.

Safes, vaults, and night depositories

(R.C. 1109.08)

Ongoing 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 act adds that, unless agreed to in writing by the bank, nothing in this statute creates a bailment between a customer and the bank.

Relationship between bank and its obligor/customer

(R.C. 1109.15(E) and 1109.151)

Prior law specified that, unless otherwise agreed in writing, the relationship between a bank and its obligor, with respect to any extension of credit, was that of a creditor and debtor, and created no fiduciary or other relationship between the parties. The act alters this provision, as follows: "Unless otherwise expressly agreed to in 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*."

Extensions of credit

Standards for extensions of credit involving real estate

(R.C. 1109.16)

Under ongoing 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 act adds "or any other factors the Superintendent considers appropriate."

Limitations on extensions of credit to one person

(R.C. 1109.22)

The act adds that, despite the limitations set forth in ongoing 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 restrictions under federal law.

Extensions of credit to executive officers

(R.C. 1109.24(F))

Under prior law, whenever an executive officer of a bank became 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 was required to submit a report to the board of directors of the bank. The report had to provide the date and amount of each extension of credit, the security for each, and the purpose for which the proceeds were to be used. The act removes this reporting requirement.

Holding of real estate or stock acquired as satisfaction of debt

(R.C. 1109.26)

Ongoing law modified by the act 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 act 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, except for a company that is a subsidiary of the state bank.

Investments

Real estate

(R.C. 1109.31)

Ongoing law modified by the act 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 act replaces "by ownership of stock of a wholly owned subsidiary corporation" with "by ownership of an entity."

Debt securities

(R.C. 1109.32)

Ongoing law authorizes banks to invest in specified bonds, debentures, and other debt securities. Prior law permitted the Superintendent to approve banks' investment in other debt securities and obligations in which national banks are

permitted to invest. The act eliminates the Superintendent's authority to approve those investments and, instead, allows state banks to invest in debt securities and obligations in which national banks, savings banks, and savings associations insured by the FDIC are permitted to invest.

Stock of federally chartered banks engaged in foreign banking

(R.C. 1109.33)

Ongoing 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 act clarifies that the 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.

Venture capital firms and small businesses

(R.C. 1109.35(A))

Ongoing law modified by the act authorizes a bank to invest, in the aggregate, 5% of its paid-in capital and surplus in shares of certain venture capital firms and small businesses. The act specifies that this limitation applies to *stock* state banks and adds – for mutual state banks – a limitation of 5% of its retained earnings.

Bankers' bank or holding company

(R.C. 1109.43)

The act 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.

Bank subsidiary corporations and service corporations

(R.C. 1109.44 and 1109.441)

Under ongoing 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 act makes the following changes:

--It clarifies that only a bank subsidiary corporation *that is a wholly owned subsidiary of the state bank* 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 prior law, the act requires that it be owned solely by one or more banks.

--The act 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.

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

In a single issuer

(R.C. 1109.47)

Under ongoing law modified by the act, 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 act replaces the term "stock" with "shares."

One of those 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 act 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.

Transactions with affiliates

(R.C. 1109.53, 1109.54, and 1109.55)

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

Sale of insurance

(R.C. 1109.62)

The act 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.

Retention of records

(R.C. 1109.69)

Ongoing law modified by the act 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 act adds "unless a longer record retention period is required by applicable federal law or regulation."

Chapter 1111. – Trust Companies

The only revisions made in R.C. Chapter 1111. 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 applies

(R.C. 1113.01)

The act 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 (R.C. Chapters 1701. and 1704.), to the extent it is not inconsistent with the Banking Law.

Application for incorporation

(R.C. 1113.02(B))

Ongoing law requires the persons proposing to incorporate a stock state bank to submit an application to the Superintendent of Financial Institutions for approval of the bank. Certain information must be included in the application, including the proposed articles of incorporation, application for reservation of a name, and the location of the proposed initial banking office. The act adds that an application must also include the proposed code of regulations and any other information required by the Superintendent.

Incorporators adoption of amendments to articles of incorporation

(R.C. 1113.05(C) to (F))

Ongoing law modified by the act 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.") Under prior law, upon their adoption of an amendment, the incorporators were required to 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 then conducted an examination to determine if (1) the amendment and the manner and basis for its adoption complied with the applicable statutory requirements and (2) it would 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 was required to approve or disapprove it.

The act revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the act, 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 the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 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 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 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 considered approved. The approval of a proposed amendment cannot,

however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

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.

Code of regulations

(R.C. 1113.11)

Ongoing 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 act 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.

Shareholder adoption of amendments to articles of incorporation

Procedure

(R.C. 1113.12(F) to (I))

Ongoing law modified by the act 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.") Under prior law, upon their adoption of an amendment, the bank was required to send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent then conducted an examination to determine if (1) the amendment and the manner of its adoption complied with the applicable statutory requirements and (2) it would 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 was required to approve or disapprove it.

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

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 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 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 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 considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

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.

Signature of authorized representatives

(R.C. 1113.12(G))

Under prior law, if the *directors* proposed the amendment, the certificate sent to the Superintendent had to be signed by "bank officers." The act instead requires that it be signed by "the bank's authorized representatives."[30]

Amendment to permit certain shares

(R.C. 1113.12(D))

Ongoing law modified by the act 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, such as a merger or acquisition. The act eliminates the requirement that there be a specific purpose for the shares.

Directors adoption of amendments to articles of incorporation

Procedure

(R.C. 1113.13(D) to (G))

Ongoing law modified by the act 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.") Under prior law, upon the directors' adoption of an amendment, the bank was required to 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 then conducted an examination to determine if (1) the amendment and the manner of and basis for its adoption complied with the applicable statutory requirements and (2) it would 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 was required to approve or disapprove it.

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[30] See also R.C. 1103.19.

The act revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the act, 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 the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors. Within 45 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 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 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 considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

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.

Signature of authorized representatives

(R.C. 1113.13(E))

Under prior law, upon the directors' adoption of an amendment, the certificate sent to the Superintendent had to be signed by "bank officers." The act instead requires that it be signed by *the bank's authorized representatives*.[31]

Meetings of shareholders

(R.C. 1113.14(A) to (D))

Prior law specified the manner in which written notice of meetings of the shareholders was to be provided and the period of time for giving the notice. The act eliminates those specific requirements and, instead, provides that a meeting may be called for any of the 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.[32]

Additionally, the act 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.

Voting by shareholders

(R.C. 1113.16)

Ongoing 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 act, this applies "except as otherwise expressly provided in the terms of any class of shares issued by a stock state bank."

Ongoing law modified by the act also permits any shareholder to vote by proxy authorized in writing. The act 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.[33]

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[31] See also R.C. 1103.19.

[32] See R.C. 1701.40 and 1701.41, not in the act.

[33] See R.C. 1701.48, not in the act.

Shareholder lists; right to examine records

(R.C. 1113.17)

Under ongoing law modified by the act, the board of directors – upon request of any shareholder at any meeting of shareholders – must produce a list of the shareholders of record. The act 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 act 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.

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

Governance

(R.C. 1114.01)

The act specifies that a mutual state bank and the rights and liabilities of its members are to be governed by its articles of incorporation, code of regulations, and bylaws and by R.C. Chapter 1114.

Incorporating a mutual state bank

Application

(R.C. 1114.02)

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 R.C. Chapter 1114.; and

- Any other information the Superintendent requires.[34]

Publication of the proposed incorporation; comments

(R.C. 1114.03(A) and (B))

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 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 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.

Approval of the application

(R.C. 1114.03(C) to (E))

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, 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.

[34] 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.)

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.

Authorized capital

(R.C. 1114.05)

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 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.

Certificate of authority to commence business

(R.C. 1114.06 and 1114.07)

Until a mutual state bank organized under R.C. Chapter 1114. 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.

The act 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 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.

Members of a mutual state bank; proxies

(R.C. 1114.08)

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.

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. On and after January 1, 2018, the writing or verifiable communication appointing a proxy must be separate and distinct from any deposit or loan agreement or any other document or disclosure provided by the bank to a depositor.

Incorporators' adoption of amendments to articles of incorporation

(R.C. 1114.09(A) to (C)(1))

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.

Prior approval

(R.C. 1114.09(C)(2) to (5))

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 45 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 20 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 45 days after receiving the additional information.

If the Superintendent disapproves the proposed amendment, the Superintendent must 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. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

Final approval

(R.C. 1114.09(D) to (F))

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.

Code of regulations

(R.C. 1114.10)

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.

Notice of meetings

(R.C. 1114.12(A) and (B))

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 in either of the following ways:

(1) By publication, once each week on the same day of the week for three consecutive weeks immediately preceding the date of the meeting in a newspaper published in and of general circulation in the county in which the principal office of the bank is located, of a notice containing the name of the bank and the purpose, place, date, and hour of the meeting;

(2) By notice served upon or mailed to members in accordance with the General Corporation Law.[35]

The notice must include a statement that, if a member granted a proxy to the officers and directors of the bank, the proxy is revocable at any time before the meeting or by attending the meeting and voting in person.

Member or director adoption of amendment to articles of incorporation

(R.C. 1114.11(A))

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 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.

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.

[35] See R.C. 1701.41, not in the act.

Prior approval

(R.C. 1114.11(D))

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 45 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 20 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 45 days after receiving the additional information.

If the Superintendent disapproves the proposed amendment, the Superintendent must 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. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

Final approval

(R.C. 1114.11(E) to (G))

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.

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.

Liquidations and dissolutions

(R.C. 1114.16)

In the event of a liquidation or dissolution of a mutual state bank, the priority claims are to be established in accordance with the Banking Law.[36]

Chapter 1115. – Conversions/Acquisitions/Mergers

Conversions

Ohio bank into national or other state institution

(R.C. 1115.01)

Under the act, 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 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-

[36] See R.C. 1125.24.

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.

National or other state institution into Ohio bank

(R.C. 1115.02)

The act 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.

Mutual state bank into stock state bank and vice versa

(R.C. 1115.03)

The act 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 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 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. All duties, trust, obligations, and liabilities of the predecessor bank continue in the bank resulting from the conversion.

Acquisitions

(R.C. 1115.06(B) and (C))

Continuing 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. Prior law required that the notice provided to the Superintendent include specific information, such as the identity and business background of each person on whose behalf the acquisition was 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 act eliminates the list of specific information that is required and, instead, requires that the notice contain any information the Superintendent may require by rule.

Consolidations/Mergers

With another financial institution

(R.C. 1115.11(A), (B), and (I))

The act modifies prior that continues in part 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:

- Either or both of the following, as applicable:

  (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 regulatory authority under which the bank, savings bank, or savings association is doing business.

Under prior law that continues in part, for a merger or consolidation in which the resulting or surviving corporation would have been a state bank, an application that included an officers' certification regarding the transaction, a copy of the consolidation or merger agreement, and any other information the Superintendent required, had to be filed with the Superintendent for the Superintendent's approval. The act eliminates the officers' certification but maintains the other requirements.

The act 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.[37]

With an affiliate

(R.C. 1115.27)

The act modifies continuing 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

[37] See R.C. 1701.85, not in the act.

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.

Under prior law that continues in part, the bank that would have been the surviving bank in the merger was required to 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 required. The act eliminates the officers' certification but maintains the other requirements.

Transfers or acquisitions of assets and liabilities

(R.C. 1115.14(A) and (H) and 1115.15)

Under continuing 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 act 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.

The act 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.[38]

Lastly, continuing 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 act adds that the consent must be given in writing.

Rights of creditors protected

(R.C. 1115.20)

Prior law provided that, in any transfer, consolidation, or merger, the rights of creditors is preserved unimpaired and the constituent corporations were deemed to continue their separate existence if the continuation was necessary to preserve any creditor's right. Under the act, this provision applies only to transfers. With respect to consolidations or mergers, the act adds that the rights and obligations of the surviving or new bank are to be governed by the General Corporation Law.[39]

Shelf charter

(R.C. 1115.24)

The act 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 R.C. Chapter 1115.;

--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;

[38] See R.C. 1701.85, not in the act.

[39] See R.C. 1701.82, not in the act.

--Acquisition of assets from and assumption of liabilities, pursuant to R.C. Chapter 1115., 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 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:

--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 act authorizes the Superintendent to adopt rules and issue interpretive guidelines the Superintendent considers necessary and appropriate for the implementation of this provision.

Chapter 1116. – Mutual Holding Companies

Definitions

(R.C. 1116.01)

"**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.

"**Reorganization plan**" means the plan to reorganize into a mutual holding company structure as described under R.C. Chapter 1116.

"**Reorganizing mutual state bank**" means a mutual state bank that proposes to reorganize into a mutual holding company structure in accordance with R.C. Chapter 1116.

"**Resulting mutual holding company**" means a bank holding company organized in mutual form under R.C. Chapter 1116. and, unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company organized under R.C. Chapter 1116.

"**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 and liabilities, including all deposit accounts, of the reorganizing mutual state bank upon consummation of the reorganization.

"**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.

"**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.

General Corporation Law applies

(R.C. 1116.02)

Under the act, 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. However, a nonbank subsidiary of a mutual holding company may be organized under the general corporate laws of another state of the United States.

A mutual holding company and any subsidiary of a mutual holding company organized under R.C. Chapter 1116. are subject to all powers, remedies, and sanctions provided to the Superintendent and the Division of Financial Institutions under the Banking Law.

Mutual state bank reorganization as mutual holding company

(R.C. 1116.05(A) and (B))

The act 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 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.

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.

Board and member approval of reorganization; application

(R.C. 1116.05(C))

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.

Reorganization plan

(R.C. 1116.07)

The act 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 act;
- 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.

Approval of application

(R.C. 1116.06 and 1116.08)

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:

(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.

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

Membership rights

(R.C. 1116.09(A) and (B))

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 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.

The act 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.

Governance by board of directors

(R.C. 1116.10)

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 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.

Reorganization plan: amendment or termination

(R.C. 1116.13)

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.

Transfer of assets and liabilities

(R.C. 1116.11)

The act 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.

Deposit accounts

(R.C. 1116.12)

Under the act, 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.

Conversion of mutual holding companies

(R.C. 1116.16)

The act permits a mutual holding company organized under federal law or the laws of another state to convert to a mutual holding company organized under R.C. Chapter 1116. by submitting an application to, and obtaining the approval of, the Superintendent. State banks existing as of January 1, 2018, that are affiliates of a mutual holding company organized under federal law or the laws of another state and that

submit an application within one year after that date are eligible for an expedited review process.

Powers and duties

(R.C. 1116.18)

Subject to all necessary regulatory notices or approvals, a mutual holding company organized under R.C. Chapter 1116. 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.

Surplus distribution

(R.C. 1116.19)

The act 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.

Subsidiary holding company; issuance of securities

(R.C. 1116.20)

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 R.C. Chapter 1116. 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.

Converting to a stock holding company

(R.C. 1116.21)

The act permits a mutual holding company organized under R.C. Chapter 1116. to convert to a stock holding company by submitting an application to, and obtaining the approval of, the Superintendent.

Chapter 1117. – Bank Offices

Notice of proposed banking office

(R.C. 1117.02)

Under continuing law, changed in part by the act, 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. The Superintendent is required to consider certain factors in determining whether to approve a proposed banking office. The act eliminates "the adequacy of the bank's paid-in capital" as one of those factors.

Relocation procedures

(R.C. 1117.04)

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 act 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."

Providing services to the bank's customers at another institution

(R.C. 1117.05)

Under continuing law, changed in part by the act, 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 act eliminates "the adequacy of the paid-in capital" of both the contracting bank and the other institutions as one of those factors.

Nonobservance of banking hours

(R.C. 1117.07)

Continuing 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. Prior law prohibited a banking office from remaining 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 act, 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.

Chapter 1119. – Foreign Banks

The only revisions made in R.C. Chapter 1119. are conforming changes.

Chapter 1121. – Superintendent's Powers

Definitions

(R.C. 1121.01(B))

For purposes of R.C. Chapter 1121., the definition of "**regulated person**" 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 act 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.

Parity rules

(R.C. 1121.05)

Under continuing 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 act provides that, in addition to granting these rights and power to state banks, they also must be granted to trust companies. The act 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 act 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 of not less than one year nor more than two years from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law. Upon the written request of a bank or trust company, the Superintendent may grant a longer period of time.

Reduction of disadvantage to a state bank or trust company

(R.C. 1121.06)

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 continuing law to adopt a rule to reduce or eliminate the disadvantage. The act expands this provision to include any regulation, interpretation, or guideline of the Consumer Financial Protection Bureau, National 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 continuing 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 act 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 of not less than one year nor more than two years from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law. Upon the written request of a bank or trust company, the Superintendent may grant a longer period of time.

Examination authority

Examination of bank records

(R.C. 1121.10)

Continuing 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 act 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. It also reduces, from 20 to 10 years, the period of time that a bank's examination report and all related correspondence must be preserved by the Superintendent.

Examination of controlling shareholder

(R.C. 1121.12 and 1121.13)

Continuing 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 act 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 continuing law for conducting such an examination, the act 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 subsidiary or nonbank affiliate as its affairs relate to the bank and the examination is necessary to fully determine the risk to the bank.

Prohibited acts; remedies

(R.C. 1121.16(A) and (B))

Continuing 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 act, 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.

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

- Issue a cease and desist order, a removal or prohibition order, or a suspension or temporary prohibition order. The act also permits the Superintendent to assess a civil penalty.
- Appoint a conservator. Under the act, this applies only to a *state* bank.
- Initiate civil or criminal proceedings.

Execution of documents

(R.C. 1121.17)

Under continuing law, 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 act 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.*

Assessments and examination fees

(R.C. 1121.10(C), 1121.24, and 1121.29)[40]

The act reinstates the authority of the Superintendent to (1) charge banks application fees and the costs of the Division's special or follow-up examinations and visitations and (2) annually assess banks, savings and loan associations, and savings banks for purposes of funding the operations of the Division.[41]

Under the act, the Superintendent is to assess, on an annual or periodic basis, each bank, savings and loan association, and savings bank that is subject to inspection and examination by the Superintendent. The assessment is to be based on the total assets of the particular institution as of December 31 of the prior year and is to be used to fund the operations of the Division.

To establish the schedule of assessments, the Superintendent is to determine the Division's budget for examination and regulation of the institutions and take into

[40] Both R.C. 1121.24 and 1121.29 have a 90-day effective date.

[41] This authority was repealed in 2015 by H.B. 340 of the 131st General Assembly.

consideration any cash reserves and amounts collected by not yet expended or encumbered in the previous fiscal year's budget and remaining in the Banks Fund. The Superintendent must present the actual schedule to the Banking Commission for confirmation. If, prior to the end of the fiscal year, the Commission determines additional money is needed to adequately fund the Division's operations, it may increase the assessment for that fiscal year.

With respect to the charging of bank fees, the act requires the Superintendent to periodically establish a schedule of fees for examinations and applications, for certifying copies of documents filed with the Division, and for publication or serving of required notices. The fees must be reasonable considering the Division's direct and indirect costs. Fees may be waived to protect the interests of depositors and for other fair and reasonable purposes determined by the Superintendent.

The act permits the Superintendent to charge a bank for any (1) special examination requested by the bank's board of directors or a majority of its shareholders and (2) additional examination and follow-up visitations within the 24-month examination schedule that the Superintendent believes is necessary due to the condition or conduct of the bank. The Superintendent may also charge a bank for *any* examination of its operations as a trust company and data processing facility.

All assessments and fees charged by the Superintendent, and any forfeitures required to be paid to the Superintendent, must be deposited into the Banks Fund.

Confidentiality of information; disclosure

(R.C. 1121.18(A) to (C) and (E))

Under prior law, information leading to, arising from, or obtained in the course of an authorized examination was privileged and confidential. The act, 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 act 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.

The act modifies the 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 trust company, 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.

The act 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." And it permits the Superintendent to adopt rules, in accordance with the Administrative Procedure Act, to permit a bank, trust company, or other person to disclose the information in limited circumstances other than as otherwise specified by law.

Self-assessment privilege

(R.C. 1121.19)

The act provides that a self-assessment report of a bank, any contents of the report, and any data, analyses, or other information generated, created, produced, developed, or prepared 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.

Report of condition and income

(R.C. 1121.21)

Each bank and trust company is required under continuing law 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 act eliminates the penalty for failure to comply with this requirement.

The act 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.

Criminal records checks: conditional approval

(R.C. 1121.23)

Continuing law requires the Superintendent to request a criminal records check whenever the Superintendent's approval is required for a person to serve as an 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 act allows the Superintendent to conditionally approve such a person, subject to receiving satisfactory results of the criminal records check. If the Superintendent does not receive the results within 90 days after the criminal records check was requested, the Superintendent may extend the conditional approval for not more than 90 days.

Banks Fund

(R.C. 1121.30)[42]

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

Orders relative to a regulated person

(R.C. 1121.33(D) and 1121.34(B) and (D))

Under continuing law, 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

[42] This section has a 90-day effective date.

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 act, 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.

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 continuing 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 act expands the crimes for which the Superintendent can take such actions. Under the act, 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."

Administrative hearings; appeals

(R.C. 1121.38)

The act specifies that administrative hearings authorized under continuing law, *other than those regarding regulated persons*, 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.

Administrative hearings regarding a regulated person are to be open. Within 20 days after service of the notice of a hearing, the respondent may file with the Superintendent a written request for a confidential hearing. If such a request is made, the hearing is to be confidential unless the Superintendent determines it would be in the public interest to have an open hearing.

The act 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 continuing 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 act 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.

Supervision order

(R.C. 1121.41)

Under continuing law, 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 disposing of assets, lending any of its funds, and incurring debt. The act authorizes the Superintendent to specify other prohibited actions in the order.

Publication of orders and agreements

(R.C. 1121.43)

Continuing 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 act eliminates the requirement that any of this information be *published.*

Order and subpoena powers

(R.C. 1121.47)

Under continuing 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.

The act 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.

Suits and court proceedings

(R.C. 1121.48)

Continuing law requires that all suits and court proceedings brought by the Superintendent be conducted by the Attorney General. Under the act, they also may be conducted by a designee of the Attorney General.

Audit by independent auditor

(R.C. 1121.50)

The Superintendent is authorized under continuing law to require a bank, when circumstances warrant, to have an independent auditor conduct agreed upon procedures prescribed by the Superintendent. The act 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.

Proceedings when capital of bank is impaired

(R.C. 1121.52)

Prior law set forth the procedures that must be followed when the capital of a bank is impaired, including the assessment of shareholders. The act repeals those provisions and, instead, provides for the following if a state bank is undercapitalized:

--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
- 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 act 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

(R.C. 1121.56)

Under continuing 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 act extends this immunity to any agent or contractor of the Division and any supervisor appointed by the Superintendent under R.C. Chapter 1121. 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."

Chapter 1123. – Banking Commission

Overview

(R.C. 1181.16 and 1181.17)[43]

In connection with the repeal of the chapters governing Savings and Loan Associations and Savings Banks, the act eliminates the Savings and Loan Associations and Savings Banks Board. 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

(Section 130.24)

On January 1, 2018 – the date the new Banking Law 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.

[43] R.C. 1181.16 and 1181.17 were also repealed in Section 105.01 of the act, giving the repeal a 90-day effective date.

The act'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 January 1, 2018.

Commission membership and qualifications

(R.C. 1123.01)[44]

The act 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.

After the second Monday in January of each year, the Governor is to appoint two members. Members serve four-year terms (increased from three years) 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.

[44] Parallel amendments were made to R.C. 1123.01 in Section 101.01 of the act, resulting in a 90-day effective date. However, the appointment date remains unchanged

Duties

(R.C. 1123.03)[45]

In addition to its duties under continuing law, the Banking Commission is required to (1) consider the annual schedule of assessments proposed by the Superintendent of Financial Institutions and determine whether to confirm it and (2) determine whether to increase the assessments during a fiscal year.

Chapter 1125. – Liquidations and Conservatorships

Application

The act clarifies that R.C. Chapter 1125. applies to *state* banks.

Conservatorships: powers

(R.C. 1125.12(A)(9))

Continuing 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 act adds that is also must be done *in good faith*.

Involuntary liquidations

Payment of claims

(R.C. 1125.24)

Continuing 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 act adds "commissions, including vacation, severance, and sick leave pay," of those officers and employees.

[45] R.C. 1123.03 has a 90-day effective date.

Destruction of records

(R.C. 1125.30)

Under continuing 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 act adds that the records are to be destroyed in the manner authorized for banks to destroy their records.[46]

Chapter 1133. – Societies for Savings

The act repeals this chapter.

Chapters 1151. to 1157. – Savings and Loan Associations

The act repeals these chapters.

Chapters 1161. to 1165. – Savings Banks

The act repeals these chapters.

Chapter 1181. – Division of Financial Institutions

Deputy superintendents

(R.C. 1181.01)

The act eliminates the requirement that the Superintendent of Financial Institutions 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, prior law required each one to have at least five years of experience in that 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 act, the ***Deputy Superintendent for Banks*** must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) a senior level officer in a bank, savings and loan association, or a savings bank, a bank holding company, or a savings and loan holding company or (b) a senior level manager or senior professional with a

[46] See R.C. 1109.69.

primary business of, or professional focus on, auditing or providing professional advice to such institutions;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of banks, savings and loan associations, or savings banks; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.

Additionally, the ***Deputy Superintendent for Credit Unions*** must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) a senior level officer in a credit union or (b) a senior level manager or senior professional with a primary business of, or professional focus on, auditing or providing professional advice to credit unions;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of credit unions; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.

With respect to the ***Deputy Superintendent for Consumer Finance***, prior law required the Deputy Superintendent to have at least five years of experience in one or more of the consumer finance companies regulated by the Division of Financial Institutions or in the examination or regulation of banks, savings and loan associations, savings banks, credit unions, or consumer finance companies. Under the act, the Deputy Superintendent must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) an owner, officer, or senior level manager of one or more consumer finance companies, (b) a senior level manager of a mortgage banking affiliate of a bank, savings and loan association, savings bank, bank holding company, or savings and loan holding company, or (c) a senior level manager or senior professional with a primary business of, or professional focus on, auditing or providing professional advice to consumer finance companies;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of consumer finance companies; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.

Employees; bonds

(R.C. 1181.02 and 1181.03)

In addition to the employees authorized under continuing law, the act permits the Superintendent to appoint and employ such professionals and agents as the prompt execution of the duties of the Superintendent's office requires.

Under continuing law, 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 act extends this bonding requirement to each agent of the Division.

Immunity of Superintendent and employees

(R.C. 1181.04)

Under continuing 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 act 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*.

Conflicts of interest

(R.C. 1181.05)

Continuing 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 act 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;

--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 law.

Continuing law permits an employee, under certain circumstances, 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 act adds that, as an alternative, the employee may be ordered to resign.

Continuing 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 act, the employee *must demonstrate to the satisfaction of the Superintendent* that the conditions are met.

Financial Institutions Fund

(R.C. 1181.06)

The 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 act 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).

Office space for the Superintendent

(R.C. 1181.07)

Under continuing law, modified by the act, the state is 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 is necessary to keep a resident examiner. The act replaces "in any other city of the state" with *in any other location within the state*.

Seal of the Superintendent

(R.C. 1181.10)

The act eliminates the requirement that the seal of the Superintendent be one and three-fourths inches in diameter.

Copies of records as evidence

(R.C. 1181.11)

Continuing 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 act, those certificates and records may, in the absence of the Superintendent, be certified by a deputy superintendent having jurisdiction over the records.

Savings and Loan and Savings Banks Board; Savings Institutions Fund

(R.C. 1181.16, 1181.17, 1181.18; Section 512.120)

The act 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 and transfers the Fund's cash balance to the Banks Fund.

Regulation of consumer finance companies

(R.C. 1181.21)

Under continuing 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 act expressly includes the Ohio Credit Services Organization Act (R.C. Chapter 4712.) as one of those statutes.

Introduction into evidence or disclosure of nonpublic information

(R.C. 1181.25)

The Superintendent is permitted under continuing law to introduce into evidence or disclose information that otherwise is deemed privileged, confidential, or not a public record, provided the Superintendent does so as permitted under the relevant statute or in specified circumstances. Under the act, 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.[47]

If the Superintendent has reason to believe that any privileged, confidential, or other nonpublic information provided may be disclosed by the intended recipient, the act requires the Superintendent to seek a protective order or enter into an agreement to protect that information.

The act also states that all reports and other information made available under R.C. Chapter 1181. 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.

Lastly, the act states that the Superintendent is not to be considered as having waived any privilege that applies 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 (R.C. Chapter 1181. (Division of Financial Institutions)) or R.C. Chapter 1121. (Superintendent's Powers).

Other related changes made by the act

Authority to govern in the absence of the Superintendent

(R.C. 121.07)

Prior law provided that, in the absence of the Superintendent of Financial Institutions, the Director of Commerce could perform the duties vested by law in the Superintendent. The act instead requires that the Director either perform those duties **or**

[47] For the definition of "Nationwide Mortgage Licensing System and Registry," see R.C. 1322.01, not in the act.

authorize the Deputy Superintendent for Banks to perform the duties under the laws governing banking and the Deputy Superintendent for Credit Unions to perform the duties under the laws governing credit unions.

Uniform Depository Law

Public depository eligibility

(R.C. 135.032 and 135.321)

Under prior law, changed in part by the act, a bank or savings and loan association was not eligible to receive public deposits if the institution, or any of its directors, officers, employees, or controlling persons, was a party to an active final or temporary cease-and-desist order issued by the Superintendent. The act 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 an active final or temporary cease-and-desist order issued to ensure the safety and soundness of the institution.

Pooled Collateral Program: confidentiality of information

(R.C. 135.182)[48]

Continuing law requires the Treasurer of State to have created the Ohio Pooled Collateral Program by July 1, 2017. Under the Program, a public depository may pledge to the Treasurer a single pool of securities to secure the repayment of all uninsured public deposits at that public depository. The total market value of the pledged securities must equal at least:

(1) 102% of the total amount of uninsured public deposits; or

(2) An amount determined by rules adopted by the Treasurer that set forth criteria for determining the necessary aggregate market value, such as prudent capital and liquidity management by the public depository and its safety and soundness.

The act states that the following information is confidential and not a public record:

- All reports or other information obtained or created about a public depository for purposes of the determination made under (2), above;

[48] This section has a 90-day effective date. This amendment duplicates the amendment to R.C. 135.182 in section 101.01 of the act.

- The identity of a public depositor's public depository;
- The identity of a public depository's public depositors.

The act does not, however, prevent the Treasurer from releasing or exchanging such confidential information as required by law or for the operation of the Pooled Collateral Program.

Corrections and updates

The act removes outdated references (such as references to "Federal Savings and Loan Insurance"), eliminates provisions that no longer apply, 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 act 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.

Chart locating renumbered sections

UNDER PRIOR LAW	UNDER THE ACT
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

UNDER PRIOR LAW	UNDER THE ACT
1109.44(E)	1109.441

Good Funds Law: disbursement from escrow accounts

(R.C. 1349.21)

The Ohio "Good Funds Law" regulates disbursements made in residential real estate escrow transactions. An escrow or closing agent may not knowingly disburse funds from an escrow account on behalf of another person unless certain conditions are satisfied relating to the receipt of good funds.

Before disbursing the funds, the escrow or closing agent must determine the funds (1) have been transferred electronically or deposited into the escrow account of the agent and are immediately available for withdrawal (continuing law), (2) were in an aggregate amount not exceeding $1,000, had been physically received by the agent prior to disbursement, and were intended for deposit no later than the next banking day after the date of disbursement (prior law), or (3) are funds drawn on a special or trust bank account (continuing law). The act increases the dollar amount in (2), above, from $1,000 to $10,000.

Continuing law also requires that the funds transferred or deposited as described above be of certain types. Under prior law, if the funds were in the form of cash, personal checks, certain business checks, certified checks, cashier's checks, or money orders, they could not exceed – in the aggregate – $1,000. The act increases that amount to $10,000.

Continuing law also permits electronically transferred funds via the automated clearing house system initiated by, or a check issued by, the federal government, the state, or a political subdivision of the state.

Prior law permitted electronically transferred funds via the real-time gross settlement system provided by the Federal Reserve Bank. The act eliminates this method and instead permits "any other electronically transferred funds."

Bedding and toy tests

(R.C. 3713.04)

The act explicitly authorizes private laboratories that are designated by the Superintendent of Industrial Compliance within the Department of Commerce as being qualified to conduct tests and analysis of materials used in the manufacture of bedding

and stuffed toys. It also removes language authorizing the Superintendent to designate these laboratories in "various sections of the state," the effect of which is unclear.

State Fire Marshal vacancy

(R.C. 3737.21)

The act eliminates two requirements that applied when a vacancy occurred in the position of the State Fire Marshal: (1) that the State Fire Council notify all known or discoverable fire chiefs and fire protection engineers of the vacancy and (2) that the Council, no earlier than 30 days after mailing the notification, make a list of all qualified applicants for the position. The act maintains the requirement that the Council submit the names of at least three qualified applicants to the Director of Commerce. But there is no longer an explicit requirement that the Council's recommended applicants be taken from a previously compiled list of all qualified applicants. Under continuing law, the Director will appoint a State Fire Marshal from the Council's recommendations or may request the Council to submit additional names.

Boiler certificates and fees

(R.C. 4104.15 and 4104.18)

Under prior law, if, after inspecting a newly installed or operating boiler, an inspector found the boiler to be in safe working order, the inspector reported this finding to the Superintendent of Industrial Compliance. Under continuing law, if the Superintendent finds that the Administrative Code's boiler provisions have been complied with and the appropriate fees have been paid, the Superintendent must issue or renew a certificate of operation for the boiler.

The act generally eliminates from this procedure the requirement that the inspector, after finding that a newly installed or operating boiler to be in safe working order, report to the Superintendent. This eliminated duty to report applied to:

(1) Power boilers;

(2) High pressure, high temperature water boilers;

(3) Low pressure boilers; and

(4) Process boilers.

The act, however, appears to maintain the inspection report requirement for certain operating boilers used to control corrosion. The act additionally requires the Superintendent to find that the owner or user of these types of boilers both:

- Did not operate the boiler at pressures exceeding the safe working pressure; and
- Kept a record that:
    - Will show that boiler water samples were taken at required intervals;
    - Will show that the water conditions in the boilers met required standards;
    - Will show the times and reasons the boilers were out of service;
    - Was made available to the boiler inspector for examination.[49]

In addition, under continuing law if the inspector finds that a boiler is not in safe working order, the inspector must report the findings to the Superintendent who may revoke, suspend, or deny the certificate of operation and not renew the certificate until the boiler is made safe.

The act additionally distinguishes between an initial certificate of operation fee and an annual certificate renewal fee. This distinction does not change the fees charged.

The act replaces the Director of Commerce with the Superintendent of Industrial Compliance as the person who may increase the fees for licensing, inspections, and issuing certificates of operation. It also authorizes the Superintendent to establish fees to pay the costs necessary to fulfill the duties of the Division of Industrial Compliance in relation to boilers.

Elevator fees

(R.C. 4105.17)

The act limits the fees that the Superintendent of Industrial Compliance may charge in relation to the required inspection of elevators, escalators, and moving walks to fees charged for failed inspection attempts. Under continuing law, the Superintendent charges a fee when a general inspector (an inspector hired by the state, as opposed to a special inspector, who is not hired by the state) inspects an elevator, escalator, or moving walk.[50] The act eliminates the fee associated with these inspections generally, but continues to impose a fee for an inspection that was attempted but was not successfully completed through no fault of the inspector or the Division of

[49] R.C. 4104.13, not in the act.

[50] R.C. 4105.08, not in the act.

Industrial Compliance. Accordingly, the act eliminates the authority of the Superintendent to charge an additional fee for reinspection in such situations. The act maintains the missed inspection fee for elevators of $120 plus $10 for each floor where the elevator stops. Similarly, the missed inspection fee for escalators and moving walks is $300.

The act requires any person who fails to pay a certificate of operation fee within 45 days after the certificate's expiration to pay a late fee equal to 25% of the inspection fee.

The act allows the Superintendent to increase the inspection fees and the fees for issuing and renewing certificates of operation. The act also allows the Superintendent to establish fees to pay Division costs incurred in connection with the Elevator Law. The fees must bear some reasonable relation to the cost of administering and enforcing the Elevator Law.

Real estate brokers and salespersons

(R.C. 4745.01)

The act removes licensed real estate brokers and salespersons from the application of the standard license renewal procedures, which require a licensee to send any license renewal materials to the State Treasurer. Continuing law requires the Division of Real Estate, not the State Treasurer, to process license renewals for real estate brokers and salespersons.

Fireworks license moratorium

(R.C. 3743.75)

The act extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses from December 15, 2017, to September 15, 2018.

A-5 liquor permit

(R.C. 4303.051)

The act creates the A-5 liquor permit that authorizes a manufacturer of ice cream to manufacture and sell ice cream containing between 0.5% and 6% alcohol by volume. The fee for the permit is $1,000 per plant. The Division of Liquor Control may issue an A-5 permit to an ice cream manufacturer only if the sale of beer or intoxicating liquor for on- and off-premises consumption is authorized in the election precinct in which the manufacturer is located.

An A-5 permit holder may sell ice cream for on-premises consumption or in sealed containers for off-premises consumption only by in-person transaction at the permit premises. An A-5 permit holder cannot do either of the following:

(1) Use a liquor transport permit holder (H permit holder) to deliver ice cream to a personal consumer; or

(2) Sell more than four pints of ice cream for off-premises consumption to a personal consumer in any calendar day.

D-5j liquor permit

(R.C. 4303.181)

The act modifies the following conditions for certain community entertainment districts in which a D-5j liquor permit may be issued:

(1) Decreases the minimum population of a municipal corporation in which the district may be located from 5,000 to 3,000; and

(2) Increases the minimum investment in development and construction in the district from $100 million to $150 million.

This modification allows the D-5j permit to be issued in Orange Village in Cuyahoga County and potentially other municipalities in Ohio. The D-5j permit may be issued to food service operations and retail food establishments for on-premises sales of beer and intoxicating liquor.

F-9 liquor permit

(R.C. 4303.209 and 4301.62)

The act expands the eligibility criteria for the issuance of an F-9 liquor permit by allowing it to be issued to a nonprofit that operates, or manages entertainment for, a city park if:

(1) The park property is the subject of an agreement between a municipal corporation, a national nonprofit that is a foundation, and an Ohio-based nonprofit; and

(2) The agreement is for the purposes of hosting outdoor performing arts events or orchestral performances.

This provision allows an F-9 permit to be issued for the Levitt Pavilion in Dayton and potentially for other locations in Ohio.

In conjunction with the above expansion, the act exempts a person attending an outdoor performing arts event or orchestral performance on an F-9 permit premises from the Opened Container Law if:

(1) The person has in the person's possession an opened or unopened container of beer or intoxicating liquor that was not purchased from the F-9 permit holder;

(2) The event or performance is free; and

(3) The F-9 permit holder annually hosts at least 25 other free events or performances on the permit premises.

Tasting samples of alcohol

(R.C. 4301.22)

The act allows a casino (D-5n liquor permit) and a restaurant in a casino (D-5o liquor permit) to offer free tasting samples of beer, wine, or spirituous liquor. The permit holder may provide a paying customer with up to four free tasting samples of beer, wine, or spirituous liquor in any 24-hour period, provided that:

(1) The permit holder's permit authorizes the sale of the particular alcoholic beverage;

(2) The tasting samples are limited to two ounces of beer or wine or ¼ ounce of spirituous liquor per sample and are provided at the permit holder's expense; and

(3) The customer is 21 or older and consumes the tasting samples on the premises of the permit holder.

Reports by H liquor permit holders

(R.C. 4303.22)

The act requires a person who transports beer or intoxicating liquor into Ohio for delivery (H liquor permit holder) to an individual or entity, other than a liquor permit holder, to prepare and submit a monthly report to the Division of Liquor Control. The report must contain:

(1) The name of the person preparing and submitting the report;

(2) The period of time covered by the report;

(3) The name and business address of each consignor of the beer or intoxicating liquor;

(4) The name and address of each consignee of the beer or intoxicating liquor;

(5) The weight of, and unique tracking number assigned for, each delivery of beer or intoxicating liquor to each consignee; and

(6) The date of delivery.

The Division must make a report available to the public upon request.

Within 30 days of the Division's request, a person who submits a report must provide the documents used to prepare the report to the Division. The person must maintain the documents for two years after submitting the report, unless the Division authorizes the destruction of the documents at an earlier date. The person must allow the Division, any other state regulatory body, or any law enforcement agency to inspect the documents at any time during regular business hours.

The act prohibits a person from violating the reporting requirements. If a person willfully violates the reporting requirements, the Liquor Control Commission may suspend or revoke any liquor permit issued to the person by the Division.

Merger of Manufactured Homes Commission into Department

(Sections 137.10 to 137.15; R.C. Chapter 4781.; repealed R.C. 4781.02, 4781.03, 4781.05, 4781.13, 4781.54, and 4781.55; conforming changes in R.C. 1923.02, 3781.06, and 4505.181)

Transfer to Department of Commerce

The act abolishes the Manufactured Homes Commission effective January 21, 2018, and transfers its duties to the Department of Commerce and the Director of Commerce, dividing those duties between the Divisions of Industrial Compliance and Real Estate. The act transfers most of the Commission's duties to the Division of Industrial Compliance, in particular the following provisions relating to the installation of manufactured homes:

- Licensure of manufactured housing installers, including issuance of fees for license applications and renewals;
- Establishment of uniform standards for installing manufactured housing;
- Review of design plans and periodic inspection of manufactured homes and manufactured home installation;

- Investigation of complaints concerning violations of Ohio's Manufactured Homes Law; and

- Adoption of rules to administer the Law.

The act transfers to the Division of Real Estate duties regarding manufactured housing dealers, brokers, and salespersons.

Funds and fees

Industrial Compliance Operating Fund

The act abolishes the Manufactured Homes Commission Regulatory Fund and instead directs that the following fees that previously were deposited into it be instead deposited into the Industrial Compliance Operating Fund:

- Fees collected for violations of the rules adopted by the Manufactured Homes Commission; and

- Fees for annual licenses to operate a manufactured home park.

The act directs that the following fees be deposited into the Industrial Compliance Operating Fund, instead of the Occupational Licensing and Regulatory Fund:

- Fees for reviewing plans;

- Fees for conducting inspections; and

- Fees for issuance of permits and inspections for manufactured home parks located within a 100-year flood plain.

Manufactured Homes Regulatory Fund

The act directs that the following fees be deposited into the Manufactured Homes Regulatory Fund, instead of the Occupation Licensing and Regulatory Fund:

- License fees for a manufactured housing broker, dealer, or salesperson; and

- All licensing, administration, and enforcement fees collected by the Division of Real Estate related to the licensure of manufactured housing brokers, dealers, and salespersons.

Duties eliminated

The act eliminates the authority to adopt rules to govern the training, experience, and education requirements for manufactured housing dealers, brokers, and salespersons. It appears that no rules of this nature were in effect.

Although the act repeals R.C. 4781.55, which required the Manufactured Homes Commission to comply with the law requiring the suspension of licenses upon learning of a conviction of the offense of human trafficking, it appears that law would still operate with regard to the licenses issued by Department of Commerce under the Manufactured Homes Law.[51]

Transition

Under the act, the Department is successor to, assumes the rights and obligations, and assumes the authority of the Manufactured Homes Commission. The formal actions of the Commission continue in effect as the actions of the Department until modified, rescinded, or replaced.

The Department must designate the positions and employees of the Commission to be transferred to the Department. Any transferred employee retains the employee's classification, but the Department may reassign and reclassify the employee's position and compensation. In addition, the Department may establish a retirement incentive plan for eligible Commission employees who are members of the Public Employees Retirement System. Such a plan must remain in effect until January 20, 2018.

Whenever the term "Manufactured Homes Commission" is used or referred to in any statute, rule, contract, or other document, the use or reference is deemed to mean the Department of Commerce. Similarly, the term "Executive Director of the Manufactured Homes Commission" is deemed to mean the Director of Commerce.

Manufactured Homes Advisory Council

(R.C. 4781.02)

The act creates the Manufactured Homes Advisory Council within the Department of Commerce. The Council must advise the Director of Commerce concerning the Director's duties in regulating manufactured housing. The Council is to consist of seven members, with five appointed by the Director, as follows:

- One member who possesses either:

[51] R.C. 4776.20.

- A class I water supply operator certification;
- A class I wastewater works operator certification.

- One member who has expertise and background in public health;
- One member who has been appointed as a local fire chief;
- One member who is a manufactured home park operator; and
- One member who is either a manufactured housing dealer or a salesperson.

The remaining two members are appointed by legislative leaders: one member by the Speaker of the House and one by the President of the Senate. These members must be public members and have no pecuniary or fiduciary interest in the Ohio manufactured housing industry. They must not be a part of the Ohio Manufactured Homes Association or any successor entity.

The Director must consider any recommendations for appointments made by the Ohio Manufactured Homes Association or any successor entity. Unless otherwise provided by law, a public official or employee may be appointed to the Council.

Initial terms for the Council end December 31, 2021. Each term thereafter will be for four years and end on December 31 of the fourth year. A member will hold office from the date of appointment until the end of the term. No member may serve more than two consecutive four-year terms. Any member appointed to fill a vacancy that occurs prior to the expiration of a term holds office until the end of that term. A member must continue to hold office after the expiration of the member's term until the member's successor takes office or for 60 days, whichever occurs first.

The Director may remove any member from the Council for incompetence, neglect of duty, misfeasance, nonfeasance, malfeasance, or unprofessional conduct in office. Vacancies must be filled in the same manner as the original appointment.

Removal of manufactured homes from manufactured home parks

(R.C. 1923.12, 1923.13, and 1923.14)

Overview

When a person stops paying rent, engages in unlawful behavior on the leased property, or abandons a manufactured home, mobile home, or recreational vehicle, the park operator where the home or vehicle is located can begin proceedings to evict the

person (the resident or a deceased resident's estate) and remove the home or vehicle in which the person lives.

To start the eviction process, continuing law requires the park operator to first get a judgment of restitution in an eviction action. If the resident fails to remove the home or vehicle within three days after the judgment, the park operator may provide the titled owner of the home or vehicle written notice to remove the home or vehicle within 14 days.

If the home or vehicle has not been removed by the end of the 14-day period, continuing law establishes a process by which the park operator may obtain a writ of execution to enforce that judgment. A writ of execution is a court order to a levying officer (sheriff, police officer, constable, or bailiff) to enforce the judgment. The writ may include related orders to other persons as well.

The process for removal may vary if there are outstanding titles, rights, or interest in the home or vehicle, if the person dies before an eviction is complete, or if the home or vehicle is abandoned. What can be done regarding the home or vehicle or the personal property inside also varies based on the value of the home or vehicle. The act delves into detail about what takes place at each step.

Prior to requesting the writ of execution

Generally

Before requesting a writ of execution, under continuing law, the park operator must make diligent inquiries to determine if there is anyone with a right, title, or interest in the home or vehicle.

If the search is fruitful, the act requires that the park owner provide the person who has the right, title, or interest a written notice to remove the home or vehicle from the park or arrange for its sale within 21 days from the delivery of the notice. The act requires the park operator to deliver the notice in person or by ordinary mail to the person's last known address. If the home or vehicle is sold, the sale proceeds must be used to pay the rent due the park operator during the pendency of the sale.

If the search is not fruitful, or if the person with right, title, or interest in the home or vehicle does not remove it or arrange for its sale within the 21-day period, the act permits the park operator to seek the writ of execution to remove the home or vehicle from the manufactured home park and potentially sell, destroy, or transfer ownership of the home or vehicle.

Deceased residents

Continuing law provides procedures governing situations in which a deceased resident or the deceased resident's estate is evicted. Generally, the removal of the home or vehicle and any personal property abandoned on the property is conducted in the manner prescribed by the probate court.

But, if a resident is in the process of being evicted, is the titled owner of the home or vehicle, and dies prior to the removal of the home or vehicle, a different procedure applies. Under both continuing law and the act, the park operator must store the vehicle for a period of time. If an estate executor or administrator is appointed within a specified period of time, the general procedure applies; if no executor or administrator is appointed within this time period, the park operator may seek a writ of execution. The act shortens the general procedure time period from one year, under former law, to 90 days and imposes some additional duties before the park operator may seek the writ.

The act requires the park operator to make diligent inquiries to identify any person with right, title, or interest in the home or vehicle. If the search reveals a person who has right, title, or interest, the park operator must provide written notice to the person to remove or arrange for sale of the home or vehicle within 21 days. Notice must be delivered by personal delivery or ordinary mail to the person's last known address. If the home or vehicle is to be sold, the person must pay rent to the park operator while the sale is pending. If the removal or sale does not take place within 21 days, the park operator may seek the writ of execution to remove the home or vehicle from the park and potentially sell, destroy, or transfer ownership of the home or vehicle.

If the search reveals no person with a right, title, or interest, the act requires the park operator to publish a notice of a petition for a writ of execution for two consecutive weeks in a newspaper of general circulation in the county where the home or vehicle was abandoned. The park operator must provide the court written certification of the dates of publication and an affidavit attesting to the publication.

Requesting the writ of execution

The act eliminates the requirement that a park operator include all of the following with the request for the writ of execution:

- The name and last known address of each person with a right, title, or interest in the home or vehicle to be removed;

- The items of abandoned personal property and the name and last known address of each person that the park operator knows has a right, title, or interest in the personal property;

- A certification that the park operator provided the required written notice.

The act also eliminates the authority of the court clerk to require the park operator to pay an advance deposit sufficient to secure payment of the appraisal of the home or vehicle and the advertisement of the sale.

Content of the writ of execution

If the park operator requests a writ of execution on the eviction judgment and has met the requirements for issuance, the court must issue a writ of execution on the judgment. The act revises the required contents of the writ.

Holdover tenant

The act expressly sets out in the writ authority for the levying officer to remove and set out from a manufactured home park a person who remains on the premises after losing an eviction judgment. In accordance with continuing law, the act also requires the writ to order the park operator to post a 14-day notice to the person to sell or remove the home or vehicle at the person's cost three days after the judgment is entered (note – this may have already been done, as it is required before the writ can be requested). The writ must declare that if the person fails to remove the home or vehicle at the end of the 14-day period, the person forfeits the person's rights to the home or vehicle and the park operator may exercise the park operator's rights in regards to removal or destruction of the home or vehicle.

Abandoned homes or vehicles

The act expands the procedure for abandoned homes and vehicles. If the home or vehicle has been abandoned, the act requires the writ to order the park operator to submit a notarized affidavit to the county auditor listing the titled owner, address, serial number, and value of the home or vehicle. The auditor must confirm within 15 days of receipt whether the auditor agrees or disagrees with the stated value.

If the auditor agrees, the auditor must return the affidavit, signed, to the park operator. If the auditor disagrees, the auditor must notify the park operator within 15 days. The park operator may submit additional information in favor of the stated value. Upon receipt of the additional information, the auditor has ten days to respond. If the auditor agrees, the auditor must return the signed affidavit. If the auditor still disagrees, the auditor must notify the park operator. The park operator may appeal to the court issuing the writ for a ruling on the disagreement.

The act requires the writ to order the park operator to submit a signed copy of the affidavit to the court stating the value of the home or vehicle, which will be deemed

to be the park operator's sworn testimony. If the park operator knowingly includes false information in the affidavit, the park operator is guilty of the offense of falsification.

Under continuing law, the treatment of abandoned vehicles depends on the home's or vehicle's value. The act changes this threshold in a minor way. Under former law, the brackets were: (1) less than $3,000 and (2) $3,000 or more. Under the act, the brackets are: (1) $3,000 or less and (2) more than $3,000.

As under continuing law, if the abandoned home or vehicle is in the upper bracket, the writ must order the levying officer to cause the sale of the home or vehicle and the personal property within it. The act removes the former requirement that the writ list persons with an interest in the home, vehicle, or property.

If the abandoned home or vehicle is in the lower bracket, continuing law requires the writ to order the levying officer to present the writ of execution to the court of common pleas for issuance of a certificate of title to the park operator. That certificate of title transfers title of the home or vehicle to the park operator free and clear in accordance with continuing law. The act removes a provision of law that permitted, in the alternative, the writ to order the levying officer to cause the sale or destruction of the home or vehicle.

Execution of the writ

Notice

After the writ of execution is granted, continuing law requires the clerk of the court issuing the writ to send notice to the last known address of specified persons informing them that the home or vehicle may be sold, destroyed, or have its title transferred. Under the act, the notice must be given to each person (other than the titled owner of the home or vehicle) listed in the writ as having a right, title, or interest in the home or vehicle or personal property in it, and to the county auditor and county treasurer. The act provides that the person's consent is not required in order for the writ to be executed. The act removes the clerk's duty, as it existed under former law, to also send the notice to the titled owner of the home or vehicle.

Execution

Continuing law states that after receiving a writ of execution, the levying officer may cause the home or vehicle and all personal property to be retained at their current location until claimed by the owner or disposed of in accordance with continuing law. The act eliminates the option of causing the home or vehicle and all personal property to be removed and if necessary placed in storage.

Immunity

The act eliminates a provision that provides civil immunity to the levying officer for any damage caused to the home or vehicle or personal property in the *levying officer's removal* or the home, vehicle, or personal property. Instead, the act provides immunity to the levying officer regarding damage caused by the *park operator's removal* of the home or vehicle or the removal of personal property from the premises, or any damage to the home, vehicle, or personal property during the time the home or vehicle remains abandoned or stored in the park.

Payment of costs

Under continuing law, if an abandoned home or vehicle or personal property is sold, the levying officer must pay from the sale proceeds: (1) certain costs regarding the removal and movement of a home or vehicle and personal property, (2) any unpaid court costs assessed against the resident, and (3) costs of the sale. The act adds that the levying officer must pay any advertising costs the park operator paid for related to the sale. The act also removes the deposit a park operator is required to pay the clerk of courts, and consequently, the requirement that law enforcement reimburse the park operator for the deposit.

As part of executing the writ, continuing law requires the levying officer to collect costs. The act limits these costs to reasonable costs that do not exceed the standard motion fee. Prior law merely authorized the levying officer to collect costs.

Certificate of title

The act eliminates the requirement that the clerk of the court of common pleas issue a new certificate of title to a purchaser of the home or vehicle regardless of whether the writ was issued by the court of common pleas, a municipal court, or a county court. Instead, the court that issues the writ is authorized to order the title division of the court of common pleas to issue the certificate of title.

The act makes parallel changes relating to the provisions transferring certificate of title to the park operator if an abandoned home or vehicle has been offered for sale at least twice and cannot be sold. The act requires the park operator, in accordance with continuing law, to notify the county auditor of the transfer of title. If the home or vehicle is destroyed or removed, the park operator must provide the county auditor with notice of removal or destruction of the home or vehicle.

If an abandoned home or vehicle is in the lower bracket ($3,000 or less under the act), continuing law requires the levying officer to provide notice of a potential action to any person who has a right, title, or interest within 60 days of receiving the writ.

Continuing law requires the levying officer to cause the title to be transferred to the park operator within 30 days after receiving the writ. The act removes provisions that permitted the levying officer to, in the alternative, have the abandoned home or vehicle destroyed (if no one other than the titled owner) has an interest in it, or proceed with its sale. The act requires the park operator to notify the county auditor of the transfer of title. If the home or vehicle is destroyed or removed, the park operator must provide the county auditor with notice of removal or destruction of the home or vehicle.

Removal by titled owner before issuance of a writ of execution

If, prior to the issuance of a writ of execution, a titled owner wants to remove the home or vehicle, the act allows the owner to remove the home or vehicle upon payment of all costs incurred by the levying officer and a series of other fees required under continuing law.

Nuisances in manufactured home parks

(R.C. 4781.56)

The act authorizes the Division to contract with the board of health of a city or general health district to permit the Division to exercise the board's authority to abate and remove an abandoned or unoccupied home or vehicle that constitutes a nuisance and that is located in a manufactured home park within the board's jurisdiction. Under the contract, the Division may receive complaints of abandoned or unoccupied homes or vehicles that constitute a nuisance and may, by order, compel the park operator to abate and remove the nuisance. The park operator is required to pay any costs for the removal.

The act also grants the sheriff, police officer, constable, or bailiff civil immunity in relation to the abatement or removal of any abandoned or unoccupied home or vehicle pursuant to this provision.

Manufactured home installation standards

(R.C. 4781.04)

The act eliminates the option of the Division to adopt rules that establish, as the uniform standards for the design and installation of manufactured housing, manufacturers' standards that are equal to or not less stringent than the federal model standards, leaving as the only option standards that are consistent with and not less stringent than the model standards adopted by the U.S. Secretary of Housing and Urban Development.

Manufactured home inspections

(R.C. 4781.07 and 4781.281)

Designating other building department

The act permits a township, municipal corporation, or county that does not have a building department that is certified regarding manufactured homes to designate the building department of another political subdivision, that is certified, to do the following on behalf of that township, municipal corporation, or county:

- Exercise the Division's enforcement authority;
- Accept and approve plans and specifications for manufactured home foundations, support systems, and installations; and
- Inspect manufactured housing foundations, support systems, and manufactured housing installations.

A park owner or operator may request an inspection and obtain required approvals from any building department so designated by the township, municipal corporation, or county in which the manufactured home park is located.

Certification fee

Continuing law authorizes the Division to certify municipal, township, and county building departments and their personnel, or any private third party, to exercise the authority described in "**Designating other building department**," above. Inspector certification is valid for three years. The act establishes the following nonrefundable fees for manufactured home inspector certification and renewal:

(1) A certification or renewal fee of not greater than $50;

(2) A late fee for renewal of not greater than $25, in addition to the renewal fee.

Condition of manufactured home park

(R.C. 4781.57)

The act requires a park operator to ensure that all buildings, lots, streets, walkways, homes, and other facilities located in the park are maintained in satisfactory condition at all times.