



H.B. 454

126th General Assembly
(As Introduced)

Reps. Coley, Wagoner, Hartnett, Harwood, Brown, Bulp

BILL SUMMARY

- Authorizes financial institutions to enter into debt suspension and cancellation contracts with borrowers.
- Authorizes savings banks to engage in trust business and requires that savings and loan associations only engage in trust business under the general Trust Company Law.
- Exempts the Superintendent of Financial Institution's so-called "parity rules" as they relate to savings banks from a legislative review requirement that is part of the rule adoption procedure.
- Expands the authority of bankers' banks to include providing services not only to other depository institutions but also to depository institution holding companies.
- Expands the number and types of financial institutions that may qualify to act as the trustee of securities that all trust companies doing business in this state must pledge to the Treasurer of State.
- Specifically authorizes a national bank or federally chartered savings and loan association to transfer trust business to another trust company.
- Authorizes savings and loan associations and savings bank board of directors to create committees consisting of a minimum of three members to carry out assigned functions of the board subject to certain conditions.
- Revises and updates the Money Transmitters Law.

CONTENT AND OPERATION

Debt suspension and cancellation contracts

(R.C. 1109.15, 1151.321, 1161.51, and 1733.25)

Debt suspension or cancellation agreements are agreements between a financial institution and a borrower or borrowers in which, in exchange for a fee, the financial institution agrees to suspend or cancel debt, or perhaps waive finance charges, if the borrower or borrowers experience a predefined event such as death, disability, or unemployment. The bill explicitly authorizes banks, savings and loan associations, savings banks, and credit unions to enter into debt suspension and cancellation contracts with borrowers and authorizes the Superintendent of Financial Institutions, within the Department of Commerce, to establish restrictions or requirements governing such contracts.¹

Trust business, savings banks, and savings and loans

(R.C. 1101.15, 1111.02, 1111.06, 1111.07, 1151.348, and 1161.601)

Under current Ohio law, a savings bank may serve as a trustee for certain trusts (R.C. 1161.24, not in the bill). However, unlike banks and savings associations, a savings bank may not be licensed as a trust company (R.C. 1111.06). Similarly, under current law, while a savings and loan association may be licensed to engage in trust business, its licensing and operation is governed by a special statute (R.C. 1151.348), and not by R.C. Chapter 1111., which governs trust companies in general, including corporations, banks, and savings associations.

The bill authorizes savings banks and savings and loan associations to be licensed as trust companies pursuant to the general Trust Company Law (R.C. Chapter 1111.), thereby creating parity with other financial institutions with regard to the trust business.

Parity rule making authority

(R.C. 111.15)

Under current law, the Superintendent of Financial Institutions may adopt rules granting state regulated banks, savings and loan associations, and credit

¹ *Federally chartered depository institutions operating in Ohio may offer debt suspension and cancellation products to their customers without the contracts being regulated as insurance.*

unions the same rights, powers and privileges of their federally chartered counterparts. Such rules are adopted pursuant to the special rule adoption procedure (R.C. 111.15) which authority to use is granted to certain agencies for certain types of rules. This special rule adoption procedure requires proposed rules be submitted to the Joint Committee on Agency Rule Review for a legislative review. However, under existing law, the so-called "parity rules" of the Superintendent for banks, savings and loan associations, and credit unions (but not savings bank parity rules) are exempt from the legislative review requirement.

Under the bill, parity rules for savings banks, adopted per R.C. 1163.22 (not in this bill), are also made exempt from the legislative review requirement.

Bankers' banks, function and operation

(R.C. 1109.43)

Under current law, bankers' banks (banks organized to provide services to other depository institutions) may only provide services to other depository institutions. Also, the voting shares of a bankers' bank must be owned exclusively by depository institutions. The bill permits bankers' banks to also provide services to depository institution holding companies, and would permit depository institution holding companies to own voting shares of a bankers' bank.

Financial institution trustees

(R.C. 1111.04)

Under current law, a trust company must pledge, to the Treasurer of State, certain securities. This may be done by delivering the securities to the Treasurer, or by placing the securities with a qualified trustee for safekeeping. Qualified trustees, under current law, may only be federal reserve banks located in this state, a branch of a federal reserve bank located in this state regardless of where the branch is located, or a trust company.

The bill adds to the list of entities that may function as qualified trustees all of the following:

- Any federal reserve bank (eliminating the requirement that such bank be located in Ohio)
- Any federal home loan bank
- Banks authorized by the U.S. Comptroller of the Currency to accept and execute trusts

- Savings associations authorized by the U.S. Office of Thrift Supervision to accept and execute trusts

Transfer of trust business

(R.C. 1111.08)

Under current law, a trust company in this state may transfer all or part of its trust business in this state to certain other trust companies operating under state or federal authority. The bill explicitly authorizes certain national banks and federal savings associations likewise to transfer their trust business to other trust companies that otherwise meet existing law requirements that relate to notice of the transfer to various persons concerned with a trust, various courts, and organizations that maintain the trust.

Committees of boards of directors, savings and loan, and savings bank

(R.C. 1151.14 and 1161.18)

Savings and loan associations and savings banks are subject to the Ohio general Corporation Law (Chapter 1701.) regarding requirements for committees of boards of directors.

The existing law authorizes the board of directors for a corporation to create an executive or other committees and assign specific tasks to the committees so created. Current general Corporation Law specifies that such committees may consist of as few as one member.

The bill sets a minimum requirement that any committee established by a board of directors of a savings and loan association or a savings bank must have at least three members. The bill also sets forth certain functional requirements and limitations for such committees as follows:

(1) A committee may perform any task delegated to it except that it may not fill vacancies on the full board of directors or on any committee of the board.

(2) Absent committee members may have substitutes appointed by the full board for a specific meeting.

(3) Unless the savings bank or savings and loan association's constitution or its board of directors orders otherwise, a committee may act by a majority of members at a meeting or by a writing signed by the members.

(4) The act of a committee if within the scope of the committee's authority is, for all purposes, to be considered the act of the full board of directors.

Money Transmitters Law

General applicability

The Money Transmitters Law (R.C. Chapter 1315.) requires the Division of Financial Institutions to regulate businesses that are not depository institutions, but receive money for the purpose of transmitting it to others. Banks, credit unions, savings and loan associations, and savings banks, are specifically exempt from the Money Transmitters Law (existing R.C. 1315.02 and proposed new R.C. 1315.02). These financial institutions also may transmit money, but do so under the statutes that regulates these types of financial institutions.

Traditional money transmitter products include money orders, traveler's checks, and wire transfers. Certain Internet transactions, in which a third party such as "eBay" receives money from one party and transmits it to another, would fall under the jurisdiction of the Law.

Definitions

"Transmit money" as defined in the bill, means "to receive, directly or indirectly and by any means, money or its equivalent from a person and to deliver, pay, or make accessible, by any means, method, manner, or device, whether or not a payment instrument is used, the money received or its equivalent to the same or another person, at the same or another time, and at the same or another place" (proposed new R.C. 1315.01). Traditional money transmitter products include money orders, traveler's checks, and Western Union wire transfers.

Single license

Under current Ohio law, a business that transmits money within the United States and from Ohio to a foreign country, must apply for two separate licenses, one to sell, issue or transmit Ohio instruments (existing R.C. 1315.02), and another to transmit money or its equivalent to a foreign country (existing R.C. 1315.16). The bill provides for a single license for any person who receives money or its equivalent for transmission from a person located in this state (proposed new R.C. 1315.02).

Net worth requirements

Under current law, an applicant for a license to sell instruments designated as checks must have a net worth of at least \$100,000, and an applicant for a license to sell instruments designated as traveler's checks must have a net worth of at least \$1 million (existing R.C. 1315.03). The bill requires that all applicants, regardless of the nature of their money transmitter business, have a minimum net worth of at least \$500,000 (proposed new R.C. 1315.04).

Permissible investments

Current law requires that a licensee maintain permissible investments equal to the aggregate of its outstanding checks and traveler's checks (existing R.C. 1315.03(A)(5)). The bill revises the requirement to new types of money transmitter products, requiring a licensee to maintain permissible investments having an aggregate market value of not less than the aggregate amount *of all* of the licensee's "outstandings" received from persons in the United States. The bill also adds "shares in a money market mutual fund" to the list of permissible investments (proposed new R.C. 1315.06(B)(6)).

Security device

Current law requires that licensees provide a "security device" to the Superintendent for the benefit of any claimants against the licensee. The security device must either be a corporate surety bond or other form of security device listed or approved by the Superintendent, in the amount of \$100,000, plus an additional \$5,000 for each business location (existing R.C. 1315.04). The bill increases the minimum amount of a security device in the amount the Superintendent finds appropriate, but not less than \$300,000 and not more than \$2 million (proposed new R.C. 1315.07).

Reporting

Under current law, licensees must submit annually an audited unconsolidated financial statement to the Superintendent (existing R.C. 1315.06). Additionally, the Superintendent, pursuant to an investigation, may order the production of relevant books, records, and accounts of a licensee. The bill requires quarterly and annual reports that must include, among other things, balance sheets, income statements, shareholder's equity, statement of cash flow, the number of money transmission transactions and the dollar amount of those transactions (proposed new R.C. 1315.08). Furthermore, licensees under the bill must keep records, as specifically outlined in the statute, and make those records available to the Superintendent within seven business days (proposed new R.C. 1315.09).

The bill requires licensees to report within 15 business days after the occurrence, any of a list of events that might impact the licensees' activities, such as bankruptcy or reorganization, suspension or revocation proceedings by any state or governmental authority with regard to the licensee, or any felony indictment or conviction of the licensee (proposed new R.C. 1315.081).

Acquisition of a licensee

The bill requires that prior approval of the Superintendent before any person may acquire another licensee (proposed new R.C. 1315.10).

Authorized delegate, agent, or subagent

Under current law, licensees may conduct business through agents or subagents, which must hold in trust the proceeds of a sale or delivery of the licensee's Ohio instruments. Furthermore, the agent cannot commingle these proceeds with his or her own property or funds (existing R.C. 1315.08).

The bill additionally requires that a written contract exist between the licensee and the delegate, and sets forth the minimum requirements of that contract (proposed new R.C. 1315.11).

Oversight

Current law provides the Superintendent with the power to make any investigation and conduct any hearing that he considers necessary to determine whether any licensee or any other person has violated any of the provisions of the Money Transmitters Law or committed conduct that would justify suspension or revocation of license. Pursuant to the hearing or investigation, the Superintendent may compel, by subpoena, witnesses to testify and for the production of documents. Reports of investigations, and other correspondence, are considered confidential and not to be made public. However, "in the ends of justice and the public advantage" the Superintendent may publish material in a manner he considers proper (existing R.C. 1315.06).

The bill maintains the Superintendent's subpoena powers (proposed new R.C. 1315.16). It also authorizes the Superintendent to examine the records and affairs of a licensee for compliance with law; safety and soundness; and other matters that the Superintendent determines. The licensee must bear the expense of the examination (proposed new R.C. 1315.12). The bill further expands the Superintendent's investigatory power, providing explicit authority to participate with financial institution regulatory authorities of this and other states, the United States, and other countries in examinations of licensees for which there may be concurrent jurisdiction, and to share and rely on such information provided certain conditions are met (proposed new R.C. 1315.121).

The bill continues the current law requirement that information from examinations is to be considered confidential. However, the bill adds a list of entities to whom the Superintendent may disclose such information. The list includes, among others, the Governor, the Director of Commerce, the Deputy

Director of Commerce, financial institution regulatory authorities of this and other states, the United States, and other countries, and law enforcement authorities conducting criminal investigations. Disclosing information in violation of this section is a felony of the fourth degree (proposed new R.C. 1315.122).

Superintendent's enforcement authority

Current law only authorizes the Superintendent to suspend or revoke a license for specific violations of law or rule (existing R.C. 1315.03(E)). The bill provides the following additional supervisory powers to the Superintendent:

- Discretionary authority to issue and serve a notice of charges and intent to issue a cease and desist order upon a licensee or other person if the licensee is, has, or is about to engage in an unsafe or unsound practice, or, violate a law, rule or written agreement (proposed new R.C. 1315.15).
- Discretion to assess a civil penalty of not more than \$500 per day for such violations (proposed new R.C. 1315.152).
- Authority to petition a court of common pleas for the issuance of a temporary restraining order or an injunction (proposed new R.C. 1315.153).

HISTORY

ACTION	DATE
Introduced	12-20-05

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