



Sub. H.B. 454

126th General Assembly

(As Reported by H. Financial Institutions, Real Estate and Securities)

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.
- 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.
- Exempts financial institution police officers who are appointed and start to perform their duties as police officers before April 14, 2006 from a requirement to complete an Ohio peace officer training program.
- Revises and updates the Money Transmitters Law.
- Declares an emergency.

TABLE OF CONTENTS

Debt suspension and cancellation contracts	2
Trust business, savings banks, and savings and loans	3
Bankers' banks, function and operation	3
Financial institution trustees	3
Transfer of trust business.....	4
Committees of boards of directors, savings and loan, and savings bank	4
Peace Officer Training Certification.....	5
Money Transmitters Law.....	6
General applicability.....	6
Definitions	6
Licensing provisions	6
(A) Single license.....	6
(B) License renewal	7
(C) Operating without a license.....	7
(D) Entities exempt from licensing requirements	7
Net worth requirements	8
Permissible investments	9
Security device.....	9
Reporting	9
Acquisition of a licensee	10
Authorized delegate, agent, or subagent.....	10
Oversight	10
Superintendent's enforcement authority	11

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.

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 also to provide services to depository institution holding companies, and permits 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

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.*

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

The bill, however, prohibits a bank doing business under authority granted by the Comptroller of the Currency, a savings association doing business under authority granted by the Office of Thrift Supervision, or a trust company from acting as a qualified trustee for securities it or any of its affiliates is pledging to the Treasurer of State.

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 giving 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 imposes a requirement that any committee established by a board of directors of a savings and loan association or a savings bank, at a minimum, 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.

Peace officer training certification

(R.C. 4973.17)

Under current law, upon the application of a financial institution, the Secretary of State may appoint and commission persons to act as police officers on the premises of banks, savings and loan associations, savings banks, or credit unions, or elsewhere in the discharge of their duties. Police officers so appointed must be citizens of the state and of good character. An additional requirement, that these police officers have successfully completed a training program approved by the Ohio peace officer training commission, was established by Sub. H.B. 81 of the 126th General Assembly, and takes effect on April 14, 2006.

Under the current bill, police officers so appointed on or after April 14, 2006 may perform their duties up to six months by which deadline they must successfully complete the approved training program. Police officers appointed prior to April 14 2006 will be exempt from this training requirement. The bill contains an emergency clause, the stated reason for which is to accomplish the removal of the recently enacted peace officer training requirement in order "to avoid the confusion and problems that would occur if the certification requirement were to be permitted to take effect and then be repealed a short time later."

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," but does not include transactions in which the recipient of the money or its equivalent is the principal or authorized representative of the principal in a transaction for which the money or its equivalent is received, other than the transmission of money or its equivalent. "Transmit money" also includes the sale of checks and other payment instruments (proposed new R.C. 1315.01). Traditional money transmitter products include money orders, traveler's checks, and Western Union wire transfers.

Licensing provisions

(A) Single license

(R.C. 1315.02)

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).

(B) License renewal

(R.C. 1315.04)

Under current law, a license to transmit money must be renewed annually (existing R.C. 1315.03(D)). The bill provides for a continuing license, but requires each licensee to pay an annual fee for carrying on the business.

(C) Operating without a license

(R.C. 1315.99(D))

Under current Ohio law, it is a misdemeanor of the first degree for a person to violate various provisions of the Money Transmitters Law, including the requirement to obtain a license before receiving money for transmission (existing R.C. 1315.02, 1315.11, and 1315.17). The bill repeals most of these but retains and raises the penalty to a fourth degree felony for knowingly receiving money for transmission without a money transmitter license.²

(D) Entities exempt from licensing requirements

(R.C. 1315.02)

Current Money Transmitters Law does not apply to banks, savings and loan associations, credit unions, savings banks, or the United States postal service. The bill exempts the following entities from the requirement to be licensed under the proposed revised Money Transmitters Law.

(1) The United States or any department, agency, or instrumentality of the United States;

(2) The United States postal service;

(3) A state of the United States or any political subdivision of a state of the United States;

(4) A bank, credit union, savings and loan association, savings association, or savings bank organized under the laws of the United States or any state of the United States or doing business under a license granted under Chapter 1119. of the Revised Code (Ohio reserve fund requirements for nonfederal reserve system

² A felony of the fourth degree carried with it a possible prison term of 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months and a possible fine of up to \$5,000.

banks), a subsidiary or affiliate of a bank, savings and loan association, or savings bank or credit union service organization or an authorized representative of any of these;

(5) A contractor providing electronic transfer of government benefits on behalf of the United States or any department, agency, or instrumentality of the United States on behalf of any state or any political subdivision of the United States;

(6) A person the only money transmitter activity of which is to deliver payroll money on behalf of employers to employees by check or deposit in a checking or savings account at a bank, savings bank, savings and loan association, savings association or credit union;

(7) A person the only money transmitter activity of which is to accept prepayment for future purchases of that person's goods or services that are other than money transmitter services;

(8) A licensed securities, insurance, mortgage, or real estate broker or agent acting within the scope of its license;

(9) A person the only money transmitter activity of which is receiving money or its equivalent as an intermediary facilitating the closing of a sale of property or a loan;

(10) A retail seller of goods and services the only money transmitter activities of which are receipt of money or its equivalent from and to be delivered at the direction of an obligor on a credit card account for a credit card to be used solely for purchases from that retail seller or branded with the name of that retail seller or an affiliate of that retail seller;

(11) A person, the regulation of money transmitter activities under the Money Transmitters Law of which, the Superintendent of Financial Institutions determines would not serve the intended purposes of the regulation.

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 include 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(A)(1)(a) and (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(A)).

The bill prohibits the making of a false statement, misrepresentation, or false certification to the Division of Financial Institutions or in a required record

(similar to existing law provisions being repealed) or making a false entry or omitting a material entry in a record filed with or to be made available to the Division (R.C. 1315.081(B)). The bill makes an intentional violation of this provision a felony of the fourth degree. (R.C. 1315.99(D).)

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
Reported, H. Financial Institutions, Real Estate and Securities	03-21-06

H0454-RH-126.doc/jc