

CHAPTER 89

(House Bill 751)

AN ACT concerning

Financial Institutions – Regulatory Reforms

FOR the purpose of substituting a notice requirement for an application by a banking institution or credit union to install certain automated teller machines; clarifying that a notice by a banking institution or credit union to install an automated teller machine is not required under certain circumstances; altering the circumstances under which the Commissioner of Financial Regulation is required to give a banking institution or credit union notice of a certain deficiency; requiring certain individuals to provide fingerprints under certain circumstances; increasing the minimum amount of capital required to charter certain commercial banks that do not accept deposits or retain deposits in a deposit account; authorizing, instead of requiring, the board of directors of a commercial bank to fill a certain vacancy under certain circumstances; authorizing, instead of requiring, the board of directors of a savings bank to fill a certain vacancy under certain circumstances; ~~increasing the amount of~~ altering a certain civil penalty; authorizing banking institutions to have certain affiliates under certain circumstances; requiring application to and prior approval of the Commissioner to acquire or establish an affiliate or conduct a certain activity under certain circumstances; authorizing certain banking institutions to acquire or establish an affiliate or conduct a certain activity by providing a certain notice to the Commissioner under certain circumstances; establishing a certain exception to the application and notice requirements; requiring a banking institution to obtain certain information before making a certain loan; establishing an exception to the requirement that certain foreign banking corporations obtain a permit from the Commissioner under certain circumstances; repealing a certain requirement that the Commissioner receive the advice of the Banking Board under certain circumstances; defining a certain term; and generally relating to the regulation of financial institutions.

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 1–403, 3–209, 3–409, 4–508, 5–101, 5–208, 5–403, 5–506, 12–207, and 12–209

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Financial Institutions

Section 3–203.1

Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,
Article – Financial Institutions
Section 5–401
Annotated Code of Maryland
(2003 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Financial Institutions

1–403.

(a) [If the Commissioner approves,] **SUBJECT TO THIS SECTION**, a banking institution or credit union may have an automated teller machine at a location other than the principal office or a branch of a banking institution or credit union.

(b) (1) [The Commissioner may approve a proposed automated teller machine only if:

(i) The banking institution or credit union files with the Commissioner an application in the form that the Commissioner requires; and

(ii) The Commissioner determines that it will be an effective and efficient service, consistent with safety and soundness and the security of the transactions.

(2) (i) The Commissioner shall determine whether to approve an application for an automated teller machine within 30 days after the receipt of a completed application.

(ii) An application for an automated teller machine shall be deemed approved if the Commissioner takes no action within the 30–day period specified in subparagraph (i) of this paragraph.] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AT LEAST 15 BUSINESS DAYS BEFORE COMMENCING THE INSTALLATION OF AN AUTOMATED TELLER MACHINE, A BANKING INSTITUTION OR CREDIT UNION SHALL SUBMIT TO THE COMMISSIONER WRITTEN NOTICE OF ITS INTENT TO INSTALL THE AUTOMATED TELLER MACHINE.**

(2) NO WRITTEN NOTICE OF INTENT TO INSTALL AN AUTOMATED TELLER MACHINE IS REQUIRED IF THE AUTOMATED TELLER MACHINE IS TO BE

LOCATED AT THE PRINCIPAL OFFICE OR A BRANCH OF A BANKING INSTITUTION OR CREDIT UNION.

(c) (1) An automated teller machine may receive and dispense money as instructed by a customer.

(2) A banking institution or credit union may verify by direct wire transmission or otherwise any transaction that is made by means of an automated teller machine.

(3) The Commissioner may adopt rules and regulations that are substantially similar to those rules and regulations of the Comptroller of the Currency for the operation and shared use of automated teller machines by national banking associations.

(d) (1) [If, after an automated teller machine is approved,] **IF, AFTER THE COMMISSIONER RECEIVES THE NOTICE REQUIRED UNDER SUBSECTION (B)(1) OF THIS SECTION OR THE AUTOMATED TELLER MACHINE IS INSTALLED,** any requirement of this section is not being met, **OR IF THE COMMISSIONER DETERMINES THAT THE OPERATION OF THE AUTOMATED TELLER MACHINE IS NOT CONSISTENT WITH SAFETY AND SOUNDNESS AND THE SECURITY OF THE TRANSACTIONS,** the Commissioner shall give the banking institution or credit union notice of the deficiency.

(2) On notice of deficiency, a banking institution or credit union shall stop using the automated teller machine.

(3) If the Commissioner determines that the deficiency has been corrected, the banking institution or credit union may resume use of the automated teller machine.

(e) For purposes of this article, an automated teller machine is not a branch of a banking institution or credit union.

3-203.1.

(A) IN THIS SECTION, "EXECUTIVE OFFICER" HAS THE MEANING STATED IN 12 C.F.R. § 215.2.

(B) IN CONNECTION WITH THE FILING OF ARTICLES OF INCORPORATION OF A COMMERCIAL BANK WITH THE COMMISSIONER ~~AND AT ANY OTHER TIME THE COMMISSIONER REQUESTS,~~ EACH INCORPORATOR, EXECUTIVE OFFICER, AND DIRECTOR OF A PROPOSED OR INCORPORATED COMMERCIAL BANK SHALL PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL BUREAU OF INVESTIGATION AND THE CRIMINAL JUSTICE INFORMATION

SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO CONDUCT CRIMINAL HISTORY RECORDS CHECKS.

(C) AN INDIVIDUAL REQUIRED BY THIS SECTION TO PROVIDE FINGERPRINTS SHALL PAY ANY PROCESSING OR OTHER FEE REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION OR THE CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.

3-209.

(a) (1) Before the Commissioner issues a certificate to do business, the required capital stock and the required surplus shall be paid in full.

(2) A commercial bank shall have required capital stock that equals at least:

(i) \$750,000, if it is in a municipal area with not more than 50,000 inhabitants; **AND**

(ii) \$1.5 million, if it is in a municipal area with more than 50,000 inhabitants[; and

(iii) Notwithstanding the municipal area in which the commercial bank is located, the lowest minimum amount of capital required under this subsection, if the bank is not in the business of accepting deposits or retaining funds in a deposit account as defined in § 5-509 of this article].

(3) A commercial bank shall have a surplus in an amount that equals at least 20 percent of its required capital stock.

(b) (1) Before a commercial bank establishes a branch, the commercial bank shall have capital stock and surplus as provided in this subsection.

(2) For a branch that is to be located inside the municipal area of the principal banking office of the commercial bank, the commercial bank shall have capital stock and surplus that equal at least the sum of the amounts required by subsection (a) of this section.

(3) For a branch that is to be located outside the municipal area of the principal banking office of the commercial bank, the commercial bank shall have capital stock and surplus that equal at least the sum of:

(i) The amount required by subsection (a) of this section; and

- (ii) 1. \$120,000, if it is in a municipal area with not more than 25,000 inhabitants;
- 2. \$180,000, if it is in a municipal area with more than 25,000 and not more than 100,000 inhabitants;
- 3. \$240,000, if it is in a municipal area with more than 100,000 and not more than 250,000 inhabitants; and
- 4. \$900,000, if it is in a municipal area with more than 250,000 inhabitants.

(c) Unless otherwise provided by law, the unimpaired capital and surplus of a commercial bank include its debt instruments issued under § 3–312 of this title.

3–409.

The board of directors of a commercial bank [shall] **MAY** fill any vacancy on the board by electing an individual to serve until the next annual meeting of the stockholders and until a successor is elected and qualifies.

4–508.

The board of directors of a savings bank [shall] **MAY** fill any vacancy on the board by electing an individual to serve until the next annual meeting of the members or the stockholders of a subsidiary bank and until a successor is elected and qualifies.

5–101.

(a) In this title the following words have the meanings indicated.

(b) **“CAMELS” MEANS THE COMPOSITE RATING ADOPTED BY THE FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL TO EVALUATE THE ADEQUACY OF CAPITAL, QUALITY OF ASSETS, CAPABILITY OF MANAGEMENT, QUALITY AND LEVEL OF EARNINGS, ADEQUACY OF LIQUIDITY, AND SENSITIVITY TO MARKET RISK.**

(c) “Capital stock” includes both common and preferred stock of a commercial bank.

[(c)] (D) “Examiner” means:

- (1) The Commissioner; and
- (2) An individual whom the Commissioner designates as examiner.

[(d)] (E) “Federal banking authority” means, as the context requires:

- (1) The Federal Deposit Insurance Corporation;
- (2) The Federal Reserve Bank of Richmond; or
- (3) Any other appropriate federal banking authority.

[(e)] (F) “Savings bank” means an institution that:

- (1) Is incorporated under the laws of this State as a savings bank; and
- (2) Engages only in the business of savings banking.

[(f)] (G) “Trust company” means an institution that is incorporated under the laws of this State as a trust company.

5–208.

(a) If a banking institution or an other–state bank fails to make any report or submit proof of publication as required by this article, the banking institution or other–state bank is subject, in the discretion of the Commissioner, to a civil penalty ~~of~~ **NOT EXCEEDING [\$50] \$500** for each day that the report or proof is overdue.

(b) The Commissioner may institute proceedings to enforce this section.

5–401.

(a) In this subtitle the following words have the meanings indicated.

(b) “Affiliate” means any association, corporation, business trust, or other similar organization that:

(1) Is not a bank service corporation and is controlled by a banking institution through:

(i) Direct or indirect ownership or control of more than 50 percent of the voting rights;

(ii) Control of the election of a majority of the management;

(iii) Direct or indirect ownership or control of more than 50 percent of the voting rights exercised at the last election of the management;

(iv) Directors of the banking institution constituting a majority of the management of the organization; or

(v) Any direct or indirect control by stockholders of the banking institution, if the stockholders own or control:

1. More than 50 percent of the voting rights in the banking institution; or

2. More than 50 percent of the voting rights exercised at the last election of directors of the banking institution; or

(2) Controls a banking institution through:

(i) Direct or indirect ownership or control of more than 50 percent of the voting rights;

(ii) Control of the election of a majority of the directors of the banking institution;

(iii) Direct or indirect ownership or control of more than 50 percent of the voting rights exercised at the last election of the directors; or

(iv) The holding of substantially all of the capital stock of the banking institution by trustees for stockholders of the organization.

(c) “Bank service corporation” means a corporation:

(1) At least some of the stock of which is owned by a banking institution; and

(2) That is organized to perform bank service corporation activities of the type permitted under applicable provisions of Title 12 of the United States Code to a bank service corporation owned exclusively by national banking associations.

(d) “Management” means the directors, trustees, or other persons exercising similar functions of an association, corporation, business trust, or other similar organization.

5-403.

(a) [Except as provided in this section, or otherwise expressly provided by State law, a banking institution may not have an affiliate] **SUBJECT TO THIS SECTION, A BANKING INSTITUTION MAY HAVE AN AFFILIATE THAT:**

(1) PROVIDES A FINANCIAL, FIDUCIARY, OR INSURANCE SERVICE TO THE BANKING INSTITUTION, ITS OTHER AFFILIATES, OR THE PUBLIC; OR

(2) IF IT IS AN AFFILIATE UNDER § 5-401(B)(1)(I) OF THIS SUBTITLE, CONDUCTS AN ACTIVITY THAT IS PERMISSIBLE FOR A BANKING INSTITUTION.

(b) [If the Commissioner, after receiving the advice of the Banking Board, approves, a banking institution may have an affiliate that offers to the public a financial, fiduciary, or insurance service] **EXCEPT AS PROVIDED IN SUBSECTIONS (D) AND (E) OF THIS SECTION, A BANKING INSTITUTION THAT INTENDS TO ACQUIRE OR ESTABLISH AN AFFILIATE, OR TO CONDUCT A NEW ACTIVITY IN AN EXISTING AFFILIATE, SHALL APPLY TO AND RECEIVE THE PRIOR APPROVAL OF THE COMMISSIONER.**

(c) On application of the banking institution, an affiliate shall be approved if:

(1) The Commissioner determines that the approval is:

(i) Reasonably required to protect the welfare of the general economy of this State and of the banking institution; [and] **OR**

(ii) Not detrimental to the public interest or to the banking institution;

(2) The approval imposes the same conditions that federal law requires or permits as to a national banking association; and

(3) The transaction complies with the rules, regulations, and conditions that the Commissioner adopts.

(D) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, IF A BANKING INSTITUTION IS RATED CAMELS 1 OR 2 AND REMAINS WELL CAPITALIZED IN ACCORDANCE WITH THE REQUIREMENTS OF THE FEDERAL DEPOSIT INSURANCE ACT, THE BANKING INSTITUTION MAY ACQUIRE OR ESTABLISH AN AFFILIATE, OR CONDUCT A NEW ACTIVITY IN AN EXISTING AFFILIATE IF:

(1) WITHIN 10 DAYS AFTER ACQUIRING OR ESTABLISHING THE AFFILIATE OR COMMENCING THE ACTIVITY, THE BANKING INSTITUTION PROVIDES NOTICE TO THE COMMISSIONER OF THE ACQUISITION OR ESTABLISHMENT OF THE AFFILIATE OR THE ACTIVITY; AND

(2) THE AFFILIATE ONLY ENGAGES IN ANY OF THE FOLLOWING ACTIVITIES:

(I) HOLDING AND MANAGING ASSETS ACQUIRED BY THE BANKING INSTITUTION THROUGH FORECLOSURE OR OTHERWISE IN GOOD FAITH TO COMPROMISE A DOUBTFUL CLAIM, OR IN THE ORDINARY COURSE OF COLLECTING A DEBT PREVIOUSLY CONTRACTED;

(II) PROVIDING DIRECT SERVICES TO THE BANKING INSTITUTION OR OTHER AFFILIATES;

(III) MAKING, PURCHASING, SELLING, OR SERVICING FOR OTHERS LOANS OR OTHER EXTENSIONS OF CREDIT; OR

(IV) LEASING PERSONAL PROPERTY.

(E) NO APPLICATION OR NOTICE IS REQUIRED IF THE ACTIVITIES OF A NEW AFFILIATE:

(1) ARE LIMITED TO THOSE ACTIVITIES PREVIOUSLY REPORTED BY THE BANKING INSTITUTION TO THE COMMISSIONER IN CONNECTION WITH THE ESTABLISHMENT OR ACQUISITION OF A PRIOR AFFILIATE;

(2) CONTINUE TO BE LEGALLY PERMISSIBLE FOR BANKING INSTITUTIONS; AND

(3) WILL BE CONDUCTED SUBJECT TO THE SAME CONDITIONS IMPOSED BY THE COMMISSIONER FOR THE PRIOR AFFILIATE.

(F) ALL ACTIVITIES AND THE ESTABLISHMENT OR ACQUISITION OF AN AFFILIATE UNDER SUBSECTION (D) OF THIS SECTION ARE SUBJECT TO:

(1) THE SAME CONDITIONS THAT FEDERAL LAW REQUIRES OR PERMITS AS TO A NATIONAL BANKING ASSOCIATION; AND

(2) THE RULES, REGULATIONS, AND CONDITIONS THAT THE COMMISSIONER ADOPTS.

5-506.

Before a banking institution makes an unsecured loan of [\$5,000] **\$10,000** or more to any person, the banking institution shall obtain sufficient financial information from the person to support the loan.

12-207.

(A) [A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A foreign banking corporation may not have an office in this State for any purpose unless:

(1) The foreign banking corporation obtains from the Commissioner a permit for the office; or

(2) The office is authorized under:

(i) The Riegle–Neal Interstate Banking and Branching Efficiency Act of 1994 or other federal law; or

(ii) Title 5, Subtitle 9 or Subtitle 10 of this article.

(B) A FOREIGN BANKING CORPORATION THAT MAINTAINS ANOTHER LICENSE ISSUED BY THE COMMISSIONER IS EXEMPT FROM OBTAINING A PERMIT UNDER THIS SECTION.

12–209.

On application for a permit, the Commissioner[, after receiving the advice of the Banking Board,] shall issue the permit, if the Commissioner determines that the establishment and operations of the proposed office will not violate any law of this State that applies to banks and banking.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.

Approved by the Governor, April 8, 2008.