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ACT SUMMARY

- Generally authorizes financial institutions to enter into debt suspension and cancellation contracts with borrowers.
- Modifies the Trust Companies Law with respect to the trust powers of savings and loan associations and savings banks, the entities eligible to serve as "qualified trustees" of pledged securities, and the transfer of trust business.
- Makes changes to the Savings and Loan Associations Law and Savings Banks Law in connection with committees and meetings of boards of directors.
- Revises the peace officer training and certification requirements applicable to persons appointed as police officers for or on the premises of financial institutions.
- Permits a bankers' bank to provide services to depository institution holding companies and allows such holding companies to own voting shares of a bankers' bank.
- Revises the Money Transmitters Law, including with respect to licensing, net worth and business organization requirements, permissible investments, security devices, reporting and record-keeping requirements, authorized delegates, acquisition of a licensee, ceasing to do business, investigations and examinations, and enforcement.

- Modifies the Title Insurance Law relative to owner's title insurance, closing and settlement protection, and annual reviews of escrow and other accounts.

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CONTENT AND OPERATION

Financial institutions

Debt suspension and cancellation contracts

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

The act generally allows banks, savings and loan associations, savings banks, and credit unions to enter into debt suspension agreements and debt cancellation contracts with borrowers in connection with any loan or extension of credit. For these purposes, "debt suspension agreement" and "debt cancellation contract" mean a contractual arrangement under which a financial institution agrees to suspend, or to cancel, all or part of a borrower's obligation to repay a debt if the borrower experiences a predefined event.¹

This authority, however, is subject to any restrictions or requirements established by the Superintendent of Financial Institutions. Additionally, the act prohibits a financial institution from offering or financing, directly or indirectly, a debt suspension agreement or debt cancellation contract requiring a lump sum, single payment due at the outset of the agreement or contract, if the debt is secured by one to four family, residential real property.

Trust powers

Background

Savings and loan associations and savings banks are permitted to serve as trustees of a few particular types of trusts (R.C. 1151.191 and 1161.24). Under prior law, however, a savings and loan association that wished to exercise more extensive trust powers could submit an application to the Superintendent. The Superintendent was required to consider certain information, including the needs of the community for trust services, the general condition of the association, and the general character and ability of the association's management, and could grant "such limited or full trust powers . . . as seem warranted" under any conditions the Superintendent considered advisable. Prior to executing those powers, the association was required to make a deposit of \$100,000 in cash or securities. (Former R.C. 1151.348.)

The Trust Companies Law (R.C. Chapter 1111.) provides for the organization and operation of trust companies. In general, the Law specifies who

¹ See 12 C.F.R. Part 37.

is qualified to solicit or engage in trust business² in Ohio, and requires that certain persons apply to the Superintendent for a trust company license prior to soliciting or engaging in such business. Persons required to be so licensed, including Ohio-chartered banks and banks chartered by another state or country if authorized to accept and execute trusts, are subject to requirements for the pledging of securities having a par value of \$100,000. National banks with trust powers, and federal savings and loan associations or savings banks with trust powers, are *not* required to be licensed as a trust company in order to solicit or engage in trust business in Ohio. And, under prior law, neither were savings and loan associations granted more extensive trust powers by the Superintendent in accordance with R.C. 1151.348, as described above.

Operation of the act

Trust company license (R.C. 1101.15, 1111.02, 1111.06, 1111.07, 1151.348, and 1161.601). The act removes the provision permitting the Superintendent to grant more extensive trust powers to savings and loan associations (former R.C. 1151.348, as discussed above) and, instead, authorizes savings and loans to engage in trust business after obtaining a trust company license. It also permits savings banks to engage in trust business if licensed as a trust company.

The act specifies that any savings and loan association or savings bank licensed as a trust company is subject to all laws applicable to a trust company. Additionally, the Division of Financial Institutions is required to supervise these entities in accordance with the Savings and Loan Associations Law (R.C. Chapters 1151. to 1157.) and the Savings Banks Law (R.C. Chapters 1161. to 1165.), respectively. The Division may, however, apply the Trust Companies Law (R.C. Chapter 1111.) in the event of a voluntary or forced liquidation of the entity's trust business.

Pledging of securities (R.C. 1111.04). As mentioned above, trust companies are required under ongoing law to pledge certain approved securities to the Treasurer of State. The securities may be delivered to the Treasurer of State or placed with a qualified trustee for safekeeping. Prior law permitted the following to serve as "qualified trustees": (1) a federal reserve bank located in Ohio, (2) a branch of a federal reserve bank located in Ohio regardless of where the branch was located, (3) a federal home loan bank, or (4) a trust company other than the trust company that was pledging the securities.

² "Trust business" is generally defined as accepting and executing trusts of property; serving as a trustee, executor, or other fiduciary; and providing fiduciary services as a business (R.C. 1111.01).

The act removes (1) and (2), above, and, instead, permits any federal reserve bank to serve as a qualified trustee. It retains (3) and (4), above, and additionally permits a national bank, federal savings and loan association, or federal savings bank that has pledged securities and is authorized to accept and execute trusts, to serve as a qualified trustee for pledged securities other than its own.

Transfer of trust business (R.C. 1111.08). Ongoing law permits a trust company, if certain conditions are met, to transfer all or part of its trust business in Ohio to another trust company or to a national bank, federal savings and loan association, or federal savings bank that is authorized to accept and execute trusts. Under the act, this transfer authority applies as well to any such national bank, federal savings and loan association, or federal savings bank.

Boards of directors

Background (R.C. 1151.02 and 1161.02). Savings and loan associations and savings banks are organized and governed under the General Corporation Law (R.C. Chapter 1701.), unless otherwise provided in the respective Savings and Loan Associations Law or Savings Banks Law.

Executive committees (R.C. 1151.14(B) and (C) and 1161.18(B) and (C)). The General Corporation Law authorizes the board of directors of a corporation to create an executive or other committee consisting of one or more directors, and to delegate to any such committee any authority of the board other than the authority to fill vacancies on the board or on a committee of the board (R.C. 1701.63).

The act enacts almost identical provisions in the Savings and Loan Associations Law and the Savings Banks Law. It states that the constitution of the respective institutions may authorize the creation of such committees, but requires that the committees consist of *at least three* directors. It also provides some of the requirements and limitations set forth in the General Corporation Law, as follows:

--The board may appoint one or more of the directors as alternate members of a committee to take the place of any absent member of the committee.

--Each committee serves at the pleasure of the board, acts only in intervals between board meetings, and is subject to the control of the board.

--Unless otherwise provided in the constitution or ordered by the board, such a committee may act by a majority of its members at a meeting or by a writing signed by all of its members.

--An act by such a committee that is within the authority delegated to it is as effective for all purposes as an act done by the board.



Meetings (R.C. 1151.14(A) and 1161.18(A)). Prior law required the board of directors of every savings and loan association and savings bank to hold a regular meeting at least monthly and to keep a complete record of the board's proceedings in a minute book.

The act removes these provisions and, instead, requires monthly meetings *unless* the institution's constitution provides for a different frequency of meetings, which cannot be less than quarterly. A board of directors may meet more frequently than required and must do so if the Superintendent determines, in light of the institution's particular circumstances, that more frequent meetings are appropriate.

On premises police officers

(R.C. 109.71 and 4973.17)

Under ongoing law, 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, credit unions, or associations of such institutions. Commissions are valid for three years, unless otherwise revoked by the Secretary of State or by the institution. To be eligible for appointment, persons must be Ohio citizens of good character. An additional requirement, that these police officers have successfully completed a training program approved by the Ohio Peace Officer Training Commission and be certified by the Commission, was established by Sub. H.B. 81 of the 126th General Assembly, and took effect on April 14, 2006.

The act instead requires that police officers so appointed *who start to perform their duties on or after April 14, 2006*, successfully complete the training program and be certified by the Commission "within six months after starting to perform their duties." Persons commissioned as police officers *prior* to April 14, 2006, who have *not* successfully completed the training program and have *not* been certified by the Commission, may be re-appointed and re-commissioned by the Secretary of State only *during* the person's continuous employment as a police officer by the institution for which the person was employed on April 14, 2006 (or by a successor institution). The Secretary of State is required to note on such appointments and commissions that the person is not a "peace officer" for purposes of the Ohio Peace Officer Training Commission Law (R.C. 109.71 to 109.77).³

³ Under prior law, a police officer employed by a financial institution and appointed and commissioned by the Secretary of State was considered a "peace officer." The act, however, limits the "peace officer" designation to those financial institution police

Lastly, the act provides that--for the exclusive purpose of assigning break in service update training in accordance with Rule 109:2-1-12(D) of the Administrative Code--a person appointed by the Secretary of State to act as a financial institution police officer, who began performing police officer duties "on or before April 14, 2006," is to be credited as holding a valid peace officer appointment retroactive to the date on which the officer began performing these duties.

Bankers' banks

(R.C. 1109.43)

Under prior law, "bankers' banks" existed exclusively to provide services to other depository institutions.⁴ As such, the voting shares of a bankers' bank could only be owned by depository institutions; at least 20 depository institutions were required to own the voting shares of a bankers' bank; and no depository institution could own more than 15% of those shares.

Under the act, a bankers' bank may also provide services to depository institution holding companies, and depository institution holding companies are permitted to own the voting shares of a bankers' bank, subject to the limitations and requirements stated above for depository institutions.

Money transmitters

Overview

The ongoing Money Transmitters Law (R.C. 1315.01 to 1315.18) 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 Law. These financial institutions also may transmit money, but do so under the statutes that specifically regulate them.

Traditional money transmitter products include money orders, traveler's checks, and wire transfers. Certain Internet transactions, in which a third party

officers who have also been awarded a certificate by the Peace Officer Training Commission attesting to the person's satisfactory completion of a state, county, municipal, or Department of Natural Resources peace officer basic training program. (R.C. 109.71.)

⁴ A "depository institution" is a bank, savings and loan association, savings bank, or credit union (R.C. 1109.43(A)(3)).

such as eBay receives money from one party and transmits it to another, fall under the jurisdiction of the Law.

The act provides a comprehensive recodification of the Money Transmitters Law in response to the growth in the number of transmitters and, due to technological improvements, the variety of services that are now being offered. For example, prior law regulated the business of selling or transmitting "**Ohio instruments**," which was defined as "checks" (such as a money order) and traveler's checks (former R.C. 1315.01). The act, instead, regulates the transmission of money, and defines to "**transmit money**" as "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. (New R.C. 1315.01.)

The approach taken by the act is to repeal the former Money Transmitters Law and to re-enact a new Law. In the process, numerous revisions are made, including with respect to licensing, net worth and business organization requirements, permissible investments, security devices, reporting and record-keeping requirements, agents, acquisition of a licensee, ceasing to do business, investigations and examinations, and enforcement.

Licensing requirements

Former law

--*Transmission within the United States* (R.C. 1315.02). Prior law prohibited any person from engaging in the business of selling or issuing Ohio instruments, or of receiving money for transmission of or transmitting Ohio instruments, without obtaining a license from the Superintendent of Financial Institutions. An application for a license had to be accompanied by an investigation fee of not more than \$2,500 and an annual license fee of not more than \$1,000. It was a misdemeanor of the first degree to engage in that business without a license (R.C. 1315.99).

--*Transmission from Ohio to a foreign country* (R.C. 1315.16). Under prior law, only "a bank, incorporated railroad, steamship, or express company" could engage in the business of receiving money for purposes of transmitting it to a foreign country. In order to engage in that business, each such company (except



a bank) was required to (1) have at least \$500,000 of paid-in capital, surplus, and undivided profits, (2) deposit \$50,000 (in cash or securities) with the Treasurer of State or deliver a bond in the sum of \$50,000 to the Superintendent, and (3) file an annual report of its business. The law required the Superintendent to periodically establish a schedule of fees for processing initial applications and for off-site monitoring of compliance with the law.

The act

The act provides for a single licensing process for any person--regardless of the location of that person or its facilities--to receive from a person located in Ohio money or its equivalent for transmission. An application for a money transmitter license must be accompanied by an application fee in the amount established, on an annual basis, by the Superintendent. Generally, the Superintendent is required to approve or deny each application within 180 days after the date the Superintendent accepts the application as complete. (R.C. 1315.02, 1315.03, and 1315.13(A).) It is a fourth degree felony for knowingly receiving money for transmission without a money transmitters license (R.C. 1315.99).

An applicant may request *confidential treatment* of information in or related to an application if the information is any of the following: (1) of a commercial or financial nature, disclosure of which likely would result in substantial harm to the competitive position of the applicant or its affiliates, (2) of a personal, medical, financial, or similar nature, disclosure of which would result in a clearly unwarranted invasion of personal privacy, (3) contained in, related to, or derived from examinations, operating or condition reports, agreements, orders, or actions prepared by or on behalf of a governmental agency, (4) filed with a governmental agency that has not approved it for disclosure, or (5) specifically excepted from disclosure by statute. An applicant requesting confidential treatment must, for each item of information, explain the applicability of the asserted justification for confidential treatment and either demonstrate the harm that would result from public disclosure of the item or set forth the reason the applicant cannot authorize public disclosure. If the Superintendent decides not to grant confidential treatment to an item of information, the applicant may withdraw that item within ten days. An item of information granted confidential treatment by the Superintendent is not a public record. (R.C. 1315.03(C).)

In making a determination on an application, the Superintendent must consider the applicant's financial condition and business practices and the experience, competence, character, and history of compliance of all of the following: (1) the applicant, (2) its directors, (3) its president, treasurer, and secretary, each senior officer responsible for the applicant's business, and any other person that performs similar functions, and (4) any person that controls the applicant. (R.C. 1315.01(C) and (D) and 1315.04(B).)

Licenses do not need to be renewed annually, but each licensee is required to pay an annual fee for carrying on the business of transmitting money. The Superintendent is to establish the annual fee for each licensee and, in doing so, may consider the number of offices and authorized delegates the licensee has and the volume of business it does in Ohio.⁵ (R.C. 1315.04(E) and 1315.13(B).)

Entities exempt from licensing requirements

(R.C. 1315.02)

The former Money Transmitters Law did not apply to banks, savings banks, savings and loan associations, credit unions, or the United States Postal Service. Under the act, all of the following entities are exempt from the requirement to be licensed in order to transmit money:

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

(2) The United States Postal Service;

(3) A state or any of its political subdivisions;

(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 or doing business under a license granted under Chapter 1119. of the Revised Code (foreign banks), a subsidiary or affiliate of a bank, savings and loan association, or savings bank, a 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 or on behalf of any state or its political subdivisions;

(6) A person whose only money transmitter activity 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;

⁵ An "***authorized delegate***" is a person designated by a licensee to receive, directly or indirectly, money or its equivalent for transmission by the licensee (R.C. 1315.01(A)). (See also "**Agents/authorized delegates**," below.)

(7) A person whose only money transmitter activity 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 whose only money transmitter activity 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 whose only money transmitter activities 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 determines would not serve the intended purposes of the regulation.

Net worth and business organization requirements

Under prior law, an applicant for a license to sell instruments designated as checks (such as a money order) had to have a net worth of at least \$100,000, and an applicant for a license to sell instruments designated as traveler's checks had to have a net worth of at least \$1 million (former R.C. 1315.03). The act requires that all applicants, regardless of the nature of their money transmitter business, have a minimum net worth of at least \$500,000. It also requires that each applicant be (1) a legally established business entity that is capitalized separately and distinctly from every other legal entity and (2) qualified to do business in Ohio. After licensure, these requirements must be met at all times. (R.C. 1315.04(C) and 1315.05.)

Permissible investments

Prior law required that a licensee maintain permissible investments with a value at least equal to the aggregate of its outstanding checks and traveler's checks (former R.C. 1315.03(A)(5)). "Permissible investments" was defined to include cash; certificates of deposit; banker's acceptances; commercial paper rated of prime quality; interest-bearing obligations issued or guaranteed by the United States or any agency of the United States or by any state or its political subdivisions; interest-bearing obligations traded on a national securities exchange;

and any other investment approved by the Superintendent (former R.C. 1315.01(H)).

The act revises the permissible investment requirement to recognize new types of money transmitter products. Under the act, a licensee generally must maintain permissible investments having an aggregate market value of not less than the aggregate amount of *all moneys received for transmission* from persons in the United States, which moneys are not yet delivered, paid, or accessed.⁶ The act also expands the list of "permissible investments" set forth above to include shares in a money market mutual fund. These investments are "impressed with a trust" for the benefit of persons the money of which the licensee holds for transmission, and are not available to satisfy any other of the licensee's creditors. (R.C. 1315.01(F) and 1315.06.)

Security device

Ongoing law requires licensees to provide and maintain a security device for the benefit of any claimants against the licensee. Generally, the security device may be in the form of a surety bond or a pledge of (1) cash or (2) interest-bearing stocks, bonds, notes, debentures, or other obligations issued or guaranteed by the United States, an agency or instrumentality of the United States, this state, or a city, county, town, village, school district, or instrumentality of this state.

Prior law required that, if the security device provided was a surety bond, it be in the principal sum of \$100,000 and an additional principle sum of \$5,000 for each location (in excess of one) at which the applicant intended to conduct business--up to a maximum of \$300,000. Any other security device had to be in an amount not less than that required for the bond. (Former R.C. 1315.04.)

The act increases the amount of the security device to \$300,000. If the Superintendent finds it appropriate, a greater amount may be required. That amount cannot, however, exceed \$2 million unless pursuant to a supervisory action. (R.C. 1315.07.)

Reporting

Prior law required each licensee to annually file its most recently audited unconsolidated financial statement, including its balance sheet and receipts and disbursements for the preceding year, together with a list of its permissible investments (former R.C. 1315.06(C)). The act, instead, does the following:

⁶ *This requirement may be waived by the Superintendent if the aggregate amount of these moneys does not exceed the licensee's security device (see below).*

--Requires the filing of a licensee's audited unconsolidated financial statements for each fiscal year within 120 days after the end of that fiscal year. The filing must include a balance sheet, income statement, statement of changes in shareholder equity, and statement of cash flows. If the licensee is a subsidiary of another company, it also must file the audited consolidated financial statements of its parent company. (R.C. 1315.08(B).)

--Requires a licensee, within 45 days after the end of each calendar quarter, to file (1) its unaudited, unconsolidated financial statements, (2) a statement for the calendar quarter of the number of money transmission transactions undertaken by the licensee in Ohio and in the United States, the dollar amount of those transactions, and the number and dollar amount of the transactions currently outstanding, (3) a schedule of the licensee's permissible investments and their market values as of the end of the calendar quarter, (4) a schedule of the locations within Ohio at which the licensee conducts business directly or through its authorized delegates, and (5) any other information required by the Superintendent. (R.C. 1315.08(A).)

--Requires a licensee, within 15 business days after the occurrence of any of the following events, to file a written report describing how the event is expected to impact the licensee's activities in Ohio: (1) any material change in information provided in its application or any report it filed with the Superintendent, (2) the licensee's filing for bankruptcy or reorganization, (3) the institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities, (4) any felony indictment or conviction of the licensee, or any of its controlling persons,⁷ directors, officers, or employees, related to money transmission activities, (5) any proposed change of control of the licensee, and (6) the licensee's decision to voluntarily surrender or not renew a money transmitter license it holds in another jurisdiction. (R.C. 1315.081(A).)

⁷ "**Controlling person**" means any person that controls a licensee. "**Control**" is defined as the power, directly or indirectly, to direct the management and policies of a licensee or the ownership, control of, or power to vote 25% or more of any class of the outstanding voting securities of any person that controls a licensee. For purposes of determining the percentage of a licensee controlled by any person, the person's interest is to be aggregated with the interest of any other person controlled by that person or by any spouse, parent, or child of that person. (R.C. 1315.01(B) and (C).)

Record keeping

(R.C. 1315.09)

Under the act, each licensee is required to make, keep, and preserve the following for a period of five years for inspection by the Superintendent:

- (1) Records of each money transmission transaction;
- (2) A general ledger containing all assets, liabilities, capital, income, and expense accounts, posted at least monthly;
- (3) Bank statements and reconciliation records;
- (4) A record of all payments made and of all moneys received for transmission that are not yet delivered, paid, or accessed;
- (5) The names and addresses of all authorized delegates of the licensee (see below);
- (6) Any other record required by the Superintendent.

The act permits a licensee to retain a document or other instrument by use of a process to record, copy, photograph, or store a representation of the original document or other instrument, *if* (a) the process correctly and accurately reproduces, or provides a means to correctly and accurately reproduce, the original document or other instrument with regard to both its substance and appearance, except that the reproduction need not reflect the original paper or other medium, size, or color, unless necessary to establish the authenticity of the original, (b) the process does not permit the recording, copy, photographic image, or stored representation of the original document or other instrument to be altered or manipulated, *and* (c) the medium the process uses to record, copy, photograph, or store a representation of an original document or other instrument is a durable medium for retaining and reproducing records.

Lastly, so long as a licensee makes its records accessible to the Superintendent on seven business days' written notice, the records may be maintained at a location other than Ohio.

Agents/authorized delegates

Prior law permitted licensees to conduct business in Ohio through designated agents and subagents, which were required to "hold in trust" the proceeds of a sale or delivery of the licensee's Ohio instruments. It also generally prohibited such agents from commingling those proceeds with their own property.

Agents were not themselves required to be licensed as money transmitters, except under certain circumstances. (Former R.C. 1315.08.)

The act similarly permits a licensee to conduct business in Ohio through an "authorized delegate," but requires that the two parties execute a written contract setting forth the responsibilities of the authorized delegate regarding (1) money or its equivalent received from persons located in Ohio for transmission by the licensee, (2) instruments, devices, or processes used by the licensee to transmit money, and (3) compliance with the laws regulating money transmission activities. Authorized delegates are prohibited from commingling money received for transmission with any other money or receipts. Lastly, the act mandates that licensees monitor the activities of their authorized delegates for compliance with the terms of their contract and the Money Transmitters Law. (R.C. 1315.11.)

Acquisition of a licensee

(R.C. 1315.10 and 1315.101)

The act generally prohibits any person from acquiring control of a licensee without the prior approval of the Superintendent.⁸ A person proposing to acquire control of a licensee must submit an application in the form prescribed by the Superintendent. If *confidential treatment* for information in or related to the application is requested by the applicant, the Superintendent may grant the request in the same manner and under the same circumstances provided for licensee applications (see "**Licensing requirements**"; "**The act**," above).

Upon examination of the relevant facts and circumstances, the Superintendent must approve the application if the Superintendent determines (a) the competence, experience, and character of the applicant and the applicant's general fitness to operate the licensee or person in control of the licensee in a lawful manner are acceptable *and* (b) the interests of the public are not jeopardized by the change of control.

The following persons are merely required to *notify* the Superintendent of a change in control, rather than obtain prior approval:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting interests of a licensee or person in control of a licensee;

⁸ *This does not apply to public offerings of securities (R.C. 1315.10(F)(2)).*

(2) A person that acquires control of a licensee (a) by devise or descent, (b) as a personal representative, custodian, guardian, conservator, or trustee, or (c) as an officer appointed by a court of competent jurisdiction or by operation of law;

(3) A person that the Superintendent by rule or order determines is not subject to prior approval based on the public interest.

Ceasing to do business

(R.C. 1315.18)

Under the act, a licensee that ceases to do business in Ohio must do so in accordance with a plan approved by, or directions issued by, the Superintendent. If the Superintendent considers it necessary to protect the interests of the licensee's customers, the Superintendent may (1) take control of permissible investments or other assets owned by the licensee equal in value to the total of all moneys received for transmission in Ohio that are not yet delivered, paid, or accessed or (2) require the sale of the licensee's contracts for continuing services or require termination of those contracts with compensation to the customers for loss of the services.

Investigations and examinations; confidential information

Prior law provided the Superintendent with the power to make any investigation and conduct any hearing that the Superintendent considered necessary to determine whether any licensee or other person had violated the Money Transmitters Law or acted in a manner that would justify suspension or revocation of its license. Pursuant to the hearing or investigation, the Superintendent could compel, by subpoena, witnesses to testify and the production of documents. Reports of investigations and related correspondence were confidential and were not to be made public. However, "in the ends of justice and the public advantage" the Superintendent could publish material in a manner considered proper. (Former R.C. 1315.06.)

The act maintains the Superintendent's subpoena powers (R.C. 1315.16). It also specifies the means by which the Superintendent may serve notice, a subpoena, or an order under the Money Transmitters Law, including (1) in person by the Superintendent or an employee or agent of the Division of Financial Institutions, (2) by regular mail, (3) by registered or certified mail, or (4) by any other manner reasonably calculated to give notice, including by publication (R.C. 1315.161).

Under the act, the Superintendent is required to examine, as often as the Superintendent considers necessary, 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. The report of each examination is to be preserved by the Superintendent for 20 years after the examination date. (R.C. 1315.12.)

The act 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 conducting independent, alternate, joint, concurrent, or coordinated examinations of licensees for which there may be concurrent jurisdiction, and to share and rely on information obtained in the course of the examinations provided certain conditions are met. For purposes of these examinations, the Superintendent is permitted to purchase services from financial institution regulatory authorities of this and other states, the United States, and other countries, which is to be considered the purchase of services from a sole source provider and not the employment of any financial institution regulatory authority or its employees.

The Superintendent may also rely on the actions of financial institution regulatory authorities of this and other states, the United States, or other countries, or participate with them jointly, in responding to violations of law, unsafe or unsound practices, breaches of fiduciary duty, or other regulatory concerns, if the other regulatory authorities have adequate personnel, practices, and authority to warrant the reliance (R.C. 1315.121).

Information leading to, arising from, or obtained in the course of the examination of a licensee is deemed "privileged and confidential" by the act. However, the Superintendent may disclose the information to the following:

- The Governor, Director of Commerce, or Deputy Director of Commerce to enable them to act in the public's interest;
- The Banking Commission to enable it to effectively advise the Superintendent;
- Financial institution regulatory authorities of this and other states, the United States, and other countries to assist them in their regulatory duties;
- The directors, officers, agents, and parent company of the licensee to assist them in conducting the business of the licensee in a safe and sound manner and in compliance with the law;
- Law enforcement authorities conducting criminal investigations.

Such information cannot be introduced into evidence, except in certain circumstances, including in connection with criminal proceedings, when litigation

has been initiated by the Superintendent, and when authorized by agreements between the Superintendent and other financial institution regulatory authorities, as described above. Furthermore, the act states that an examination report is the property of the Division of Financial Institutions and, under no circumstances, can it or its contents be made public. (R.C. 1181.25 and 1315.122(A) to (D).)

Disclosure of information in violation of these provisions is a felony of the fourth degree. In addition, the violator is to be removed from office and is liable in damages to the person injured by the disclosure. (R.C. 1315.122(E).)

Rule-making authority

(R.C. 1315.14)

The Superintendent is authorized to adopt rules that, in the Superintendent's judgment, are necessary or appropriate to carry out the purposes of the Money Transmitters Law.

Enforcement

Prior law. A violation of the Money Transmitters Law--as well as knowingly making an incorrect statement of a material fact, or knowingly omitting to state a material fact, with respect to an application, report, or statement required under the Law; refusing to permit a lawful investigation by the Superintendent; or falsely representing oneself as being authorized to transmit money to foreign countries--were misdemeanors of the first degree (former R.C. 1315.11, 1315.17, and 1315.99(A)).

Additionally, the Superintendent was permitted to suspend or revoke a license under certain circumstances, including a violation of the Money Transmitters Law or any rule adopted under the Law. In connection with an investigation of a licensee, the Superintendent could file an action in the court of common pleas to obtain an injunction, temporary restraining order, or other appropriate relief. (Former R.C. 1315.03(E) and 1315.06(E).)

The act. With respect to criminal penalties, the act makes the following a felony of the fourth degree:

--A knowing violation of the act's prohibition against engaging in the money transmitter business without a license;

--An intentional violation of the act's prohibition against making a false statement or misrepresentation to the Division of Financial Institutions or in a record filed or required to be maintained under the Money Transmitters Law; and

--An intentional violation of the act's prohibition against making a false entry or omitting a material entry in a record filed or required to be maintained under the Money Transmitters Law or made available to the Division. (R.C. 1315.02(A), 1315.081(B)(1), and 1315.99.)

The act also provides the Superintendent with additional enforcement powers, including the authority to:

(1) 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 or other person (a) is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of transmitting money or (b) is violating, has violated, or is about to violate a law, rule, or written agreement entered into with the Superintendent. A cease and desist order may, among other things, require the licensee or other person to make restitution, restrict the licensee's or other person's growth, dispose of any loan or asset involved, rescind agreements or contracts, and employ qualified officers or employees. (R.C. 1315.15.)

(2) Issue and serve a notice of charges and intent to suspend or revoke a licensee's license if the Superintendent finds, among other things, that the licensee is conducting its business in an unsafe or unsound manner, is insolvent, or refuses to permit the Superintendent to make an authorized examination, or that its net worth has become inadequate and it has failed to take the steps recommended by the Superintendent to remedy the deficiency (R.C. 1315.151);

(3) Assess civil penalties against a licensee or other person for each day a violation, unsafe or unsound practice, or breach continues. A penalty of up to \$500 per day may be assessed if the licensee or other person violates any law or rule, an order issued under the Money Transmitters Law, any condition imposed in writing by the Superintendent, or a written agreement between the licensee or other person and the Superintendent. A penalty as great as \$1,000 per day may be assessed if (1) the licensee or other person commits such a violation, recklessly engages in an unsafe or unsound practice, or breaches any fiduciary duty *and* (2) the violation, practice, or breach is part of a pattern of misconduct or causes more than a minimal loss to the licensee or other person. Civil penalties collected are to be deposited into the state treasury to the credit of the General Revenue Fund. (R.C. 1315.152.)

(4) Petition the court of common pleas for the issuance of a temporary restraining order or an injunction *if* the Superintendent has reason to believe a person is engaged in the money transmitter business without a license (R.C. 1315.153).

A notice of the Superintendent's charges and intent to issue a cease and desist order, to suspend or revoke a licensee's license, or to assess a civil penalty must also include notice that the licensee or other person is entitled to a hearing. The Superintendent may actually issue the cease and desist order, suspend or revoke a licensee's license, or assess a civil penalty if, among other things, the violation, unsafe or unsound practice, or breach has been established at the hearing. (R.C. 1315.15(B) and (C), 1315.151(B) and (C), 1315.152(B) and (C), and 1315.17.)

Application

(Section 4)

The act states that licenses issued under the former Money Transmitters Law remain in force as a license under the new Money Transmitters Law until the license's expiration date. Thereafter, the licensee is to be treated as if it had applied for and had received its license under the new Money Transmitters Law.

Other changes

The act makes conforming changes in R.C.121.07, 1121.30, 1315.21, and 4719.01.

Title Insurance

Am. Sub. S.B. 185 of the 126th General Assembly made numerous changes with respect to residential mortgage lending. The act modifies some of the changes that were made to the Title Insurance Law.

Owner's title insurance

(R.C. 3953.30)

In the event a title insurance agent issues a lender's title insurance policy in conjunction with a residential mortgage loan made simultaneously with the purchase of the real property securing the loan, and no owner's title insurance has been requested, ongoing law requires the agent to give written notice to the mortgagor. The agent must maintain a copy of the notice, signed by the mortgagor, for at least ten years. Prior law required that the notice be maintained "in the relevant underwriting file." The act removes that requirement.

Closing and settlement protection

(R.C. 3953.32)

Ongoing law requires a title insurance agent or title insurance company, relative to the issuance of a title insurance policy, to offer closing or settlement protection to the lender, borrower, and seller of the property, and to any applicant for title insurance. Under prior law, that offer had to be made at the time of close with the title insurance company. The act instead requires that the offer be made at the time the order is placed with the company.

Annual independent review

(R.C. 3953.33)

Every title insurance agent or agency that handles escrow, settlement, closing, or security deposit accounts is required under ongoing law to have an annual independent review made of those accounts. Prior law required that the review be made *on a calendar year basis* within 90 days after the close of the previous fiscal year. The act instead requires that the annual independent review be made on a fiscal year basis.

H.B. 538 (121st General Assembly): corrective changes

(R.C. 1181.06; Section 3)

The act makes corrective changes necessitated by the enactment of a revised banking law by Am. Sub. H.B. 538 of the 121st General Assembly.

HISTORY

ACTION	DATE
Introduced	12-20-05
Reported, H. Financial Institutions, Real Estate and Securities	03-21-06
Passed House (96-0)	05-09-06
Reported, S. Finance & Financial Institutions	12-12-06
Passed Senate (31-0)	12-14-06
House concurred in Senate amendments (93-0)	12-19-06

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