

HOUSE BILL 1555

11

9lr0143

By: **Chair, Economic Matters Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Rules suspended

Introduced and read first time: March 10, 2009

Assigned to: Rules and Executive Nominations

Re-referred to: Economic Matters, March 16, 2009

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 25, 2009

CHAPTER _____

1 AN ACT concerning

2 **Financial Institutions – Enhanced Supervision – Branch Banking**

3 FOR the purpose of authorizing the Commissioner of Financial Regulation to assess
4 civil penalties against certain banking institutions and credit unions for certain
5 violations after notice and hearing; authorizing certain out-of-state banks to
6 establish certain branches in the State in a certain manner under certain
7 circumstances; requiring certain reciprocity for the establishment of de novo
8 bank branches; establishing an expedited process for certain banks to establish
9 certain branches on payment of a certain fee and under certain circumstances;
10 authorizing the Commissioner to take certain actions relating to establishment
11 of certain branches; providing that this Act does not limit the authority of an
12 out-of-state bank to establish additional branches in the State; defining certain
13 terms; and generally relating to the supervision of banking institutions and
14 credit unions and the establishment of branches.

15 BY repealing and reenacting, with amendments,
16 Article – Financial Institutions
17 Section 2-108(a)(5), 5-1003, 5-1005, and 5-1006
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2008 Supplement)

20 BY repealing and reenacting, without amendments,
21 Article – Financial Institutions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Section 2-108(b), 5-808(a), and 6-906(a)
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2008 Supplement)

4 BY adding to
5 Article – Financial Institutions
6 Section 5-808.1, 5-808.2, 6-906.1, and 6-906.2
7 Annotated Code of Maryland
8 (2003 Replacement Volume and 2008 Supplement)

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

11 **Article – Financial Institutions**

12 2-108.

13 (a) The Commissioner shall charge and collect, in advance, the following
14 nonrefundable fees:

15 (5) Subject to subsection (b) of this section, a branch fee for [a notice of
16 intention]:

17 (I) AN APPLICATION of a banking institution or other-state
18 bank to open a branch under [§ 5-1003] §§ 5-1003 AND 5-1005(A) of this
19 article.....\$600;
20 OR

21 (II) AN EXPEDITED NOTICE OF A BANKING INSTITUTION OR
22 OTHER-STATE BANK TO OPEN A BRANCH UNDER §§ 5-1003 AND 5-1005(B) OF
23 THIS ARTICLE.....\$400

24 (b) The branch fee under subsection (a)(5) of this section does not apply to:

25 (1) A branch that is acquired by a banking institution through a
26 merger or consolidation with, or transfer to the banking institution of all or
27 substantially all of the assets of, a bank or an insured depository institution; or

28 (2) An other-state bank chartered by a state that does not charge a fee
29 to a banking institution for establishing a branch in that state.

30 5-808.

31 (a) The Commissioner may order any banking institution to cease and desist
32 from:

33 (1) An unsafe or unsound banking practice;

1 (2) A practice that is injurious to the public interest; or

2 (3) A violation of a law, rule, or regulation that relates to the
3 Commissioner’s supervision of the institution.

4 **5-808.1.**

5 (A) **AFTER NOTICE AND A HEARING, THE COMMISSIONER MAY ASSESS A**
6 **CIVIL PENALTY AGAINST A BANKING INSTITUTION THAT THE COMMISSIONER**
7 **DETERMINES HAS:**

8 (1) **VIOLATED A CEASE AND DESIST ORDER ISSUED BY THE**
9 **COMMISSIONER UNDER § 5-808 OF THIS SUBTITLE; OR**

10 (2) **ENGAGED IN:**

11 (I) **AN UNSAFE OR UNSOUND BANKING PRACTICE; OR**

12 (II) **A PRACTICE THAT IS INJURIOUS TO THE PUBLIC**
13 **INTEREST; ~~OR~~**

14 ~~(III) **A VIOLATION OF A LAW, RULE, OR REGULATION THAT**~~
15 ~~**RELATES TO THE COMMISSIONER’S SUPERVISION OF THE BANKING**~~
16 ~~**INSTITUTION.**~~

17 (B) **THE CIVIL PENALTY MAY NOT EXCEED:**

18 (1) **\$1,000 PER VIOLATION; AND**

19 (2) **\$1,000 PER VIOLATION FOR EACH DAY THAT THE VIOLATION**
20 **CONTINUES.**

21 (C) (1) **A CIVIL PENALTY SHALL BE ASSESSED BY WRITTEN NOTICE**
22 **OF ASSESSMENT SERVED ON THE PERSON TO BE ASSESSED.**

23 (2) **THE NOTICE OF ASSESSMENT SHALL STATE THE:**

24 (I) **AMOUNT OF THE CIVIL PENALTY;**

25 (II) **LEGAL AUTHORITY FOR THE ASSESSMENT; AND**

26 (III) **MATTERS OF FACT OR LAW CONSTITUTING THE**
27 **GROUND FOR THE ASSESSMENT.**

1 **(3) THE NOTICE OF ASSESSMENT SHALL CONSTITUTE A FINAL**
2 **ORDER FOR PURPOSES OF JUDICIAL REVIEW PURSUANT TO § 10-221 OF THE**
3 **STATE GOVERNMENT ARTICLE.**

4 **(D) IN DETERMINING THE AMOUNT OF THE CIVIL PENALTY TO BE**
5 **ASSESSED, THE COMMISSIONER SHALL CONSIDER:**

6 **(1) THE SERIOUSNESS OF THE VIOLATION;**

7 **(2) THE GOOD FAITH OF THE VIOLATOR;**

8 **(3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;**

9 **(4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE**
10 **PUBLIC AND THE BANKING INDUSTRY;**

11 **(5) THE ASSETS OF THE VIOLATOR; AND**

12 **(6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF**
13 **THE CIVIL PENALTY.**

14 **(E) (1) A CIVIL PENALTY ASSESSED UNDER THIS SECTION SHALL BE**
15 **DUE AND PAYABLE WITHIN 30 DAYS AFTER THE COMMISSIONER ISSUES THE**
16 **NOTICE OF ASSESSMENT.**

17 **(2) THE COMMISSIONER MAY REDUCE OR SET ASIDE A CIVIL**
18 **PENALTY.**

19 **(F) THE COMMISSIONER SHALL PAY ALL CIVIL PENALTIES COLLECTED**
20 **UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.**

21 **5-808.2.**

22 **(A) IN THIS SECTION, "EXTRAORDINARY CIRCUMSTANCES" MEANS A**
23 **SITUATION PRESENTING SPECIFIC CONCERNS ABOUT THE PROMPT**
24 **WITHDRAWAL OF MONEY FROM, OR THE SAFETY AND SOUNDNESS OF, A**
25 **BANKING INSTITUTION.**

26 **(B) IN EXTRAORDINARY CIRCUMSTANCES AND WITH THE CONSENT OF**
27 **THE BANKING INSTITUTION, THE COMMISSIONER MAY CLOSE TO THE PUBLIC A**
28 **HEARING CONCERNING THE ASSESSMENT OF A CIVIL PENALTY, AN ORDER TO**
29 **CEASE AND DESIST, OR ANY OTHER FORMAL ENFORCEMENT ACTION BY THE**
30 **COMMISSIONER.**

31 **5-1003.**

1 (a) A banking institution or an out-of-state bank may establish a branch in
2 this State by:

3 (1) [Opening] **SUBJECT TO SUBSECTION (B) OF THIS SECTION,**
4 **OPENING** a de novo branch;

5 (2) Purchasing an existing branch from a bank or an insured
6 depository institution; or

7 (3) Converting former headquarters or retaining former branches
8 following:

9 (i) The purchase of all or substantially all of the assets of a
10 bank or an insured depository institution; or

11 (ii) A merger or a consolidation with a bank or an insured
12 depository institution.

13 (b) **AN OUT-OF-STATE BANK MAY ESTABLISH A DE NOVO BRANCH IN**
14 **THIS STATE UNDER SUBSECTION (A)(1) OF THIS SECTION ONLY IF THE HOME**
15 **STATE OF THE OUT-OF-STATE BANK ALLOWS A BANKING INSTITUTION TO OPEN**
16 **A DE NOVO BRANCH IN ITS STATE.**

17 (c) A banking institution or an out-of-state bank may not establish or
18 maintain a branch in this State on the premises or property of an affiliate if the
19 affiliate engages in commercial activities.

20 5-1005.

21 (A) **[A] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A**
22 banking institution that proposes to establish a branch in this State or in another
23 state shall:

24 (1) File with the Commissioner, at least 30 days before the intended
25 opening date, a notice of intention to open a branch; and

26 (2) Submit to the Commissioner any information the Commissioner
27 requires in order to evaluate the proposed branch.

28 (B) **A WELL-CAPITALIZED BANKING INSTITUTION WITH A COMPOSITE**
29 **CAMELS RATING OF ONE OR TWO MAY ESTABLISH A BRANCH IN THIS STATE BY**
30 **FILING WITH THE COMMISSIONER AN EXPEDITED NOTICE, IN THE FORM THAT**
31 **THE COMMISSIONER REQUIRES, AT LEAST 30 DAYS BEFORE THE INTENDED**
32 **OPENING DATE.**

1 5-1006.

2 (A) [In] **SUBJECT TO SUBSECTION (B) OF THIS SECTION**, IN deciding
3 whether to approve a branch of a banking institution, the Commissioner shall
4 consider:

5 (1) If the branch is to be established in this State, whether the
6 establishment of the branch will promote the public convenience;

7 (2) Whether the applicant has sufficient capital to support the branch;
8 and

9 (3) Whether the applicant is generally operating in compliance with
10 the provisions of this article.

11 (B) (1) **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A**
12 **WELL-CAPITALIZED BANKING INSTITUTION WITH A COMPOSITE CAMELS**
13 **RATING OF ONE OR TWO MAY OPEN A BRANCH IN THIS STATE WITHOUT THE**
14 **APPROVAL OF THE COMMISSIONER 30 DAYS AFTER FILING AN EXPEDITED**
15 **NOTICE FOR THE PROPOSED BRANCH UNDER § 5-1005(B) OF THIS SUBTITLE.**

16 (2) **THE COMMISSIONER MAY:**

17 (I) **REQUIRE THE SUBMISSION OF ADDITIONAL**
18 **INFORMATION REGARDING THE PROPOSED ESTABLISHMENT OF A BRANCH**
19 **DURING THE 30-DAY PERIOD THAT THE EXPEDITED NOTICE IS PENDING; AND**

20 (II) **PROHIBIT THE ESTABLISHMENT OF THE BRANCH**
21 **WITHIN THE 30-DAY PERIOD IF THE COMMISSIONER DETERMINES THAT**
22 **ESTABLISHMENT OF THE BRANCH IS NOT CONSISTENT WITH THE STANDARDS**
23 **SET FORTH IN SUBSECTION (A) OF THIS SECTION.**

24 6-906.

25 (a) The Commissioner shall order any credit union to cease and desist from:

26 (1) An unsafe or unsound practice;

27 (2) A practice that is injurious to the public interest; or

28 (3) A violation of laws or rules or regulations that relate to the
29 Commissioner's supervision of the credit union.

30 **6-906.1.**

1 (A) AFTER NOTICE AND A HEARING, THE COMMISSIONER MAY ASSESS A
2 CIVIL PENALTY AGAINST A CREDIT UNION THAT THE COMMISSIONER
3 DETERMINES HAS:

4 (1) VIOLATED A CEASE AND DESIST ORDER ISSUED BY THE
5 COMMISSIONER UNDER § 6-906 OF THIS SUBTITLE; OR

6 (2) ENGAGED IN:

7 (I) AN UNSAFE OR UNSOUND PRACTICE; OR

8 (II) A PRACTICE THAT IS INJURIOUS TO THE PUBLIC
9 INTEREST; OR

10 ~~(III) A VIOLATION OF A LAW, RULE, OR REGULATION THAT~~
11 ~~RELATES TO THE COMMISSIONER'S SUPERVISION OF THE CREDIT UNION.~~

12 (B) THE CIVIL PENALTY MAY NOT EXCEED:

13 (1) \$1,000 PER VIOLATION; AND

14 (2) \$1,000 PER VIOLATION FOR EACH DAY THAT THE VIOLATION
15 CONTINUES.

16 (C) (1) A CIVIL PENALTY SHALL BE ASSESSED BY WRITTEN NOTICE
17 OF ASSESSMENT SERVED ON THE PERSON TO BE ASSESSED.

18 (2) THE NOTICE OF ASSESSMENT SHALL STATE THE:

19 (I) AMOUNT OF THE CIVIL PENALTY;

20 (II) LEGAL AUTHORITY FOR THE ASSESSMENT; AND

21 (III) MATTERS OF FACT OR LAW CONSTITUTING THE
22 GROUNDS FOR THE ASSESSMENT.

23 (3) THE NOTICE OF ASSESSMENT SHALL CONSTITUTE A FINAL
24 ORDER FOR PURPOSES OF JUDICIAL REVIEW PURSUANT TO § 10-221 OF THE
25 STATE GOVERNMENT ARTICLE.

26 (D) IN DETERMINING THE AMOUNT OF THE CIVIL PENALTY TO BE
27 ASSESSED, THE COMMISSIONER SHALL CONSIDER:

28 (1) THE SERIOUSNESS OF THE VIOLATION;

- 1 (2) **THE GOOD FAITH OF THE VIOLATOR;**
- 2 (3) **THE VIOLATOR’S HISTORY OF PREVIOUS VIOLATIONS;**
- 3 (4) **THE DELETERIOUS EFFECT OF THE VIOLATION ON THE**
4 **PUBLIC AND THE CREDIT UNION INDUSTRY;**
- 5 (5) **THE ASSETS OF THE VIOLATOR; AND**
- 6 (6) **ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF**
7 **THE CIVIL PENALTY.**

8 (E) (1) **A CIVIL PENALTY ASSESSED UNDER THIS SECTION SHALL BE**
9 **DUE AND PAYABLE WITHIN 30 DAYS AFTER THE COMMISSIONER ISSUES THE**
10 **NOTICE OF ASSESSMENT.**

11 (2) **THE COMMISSIONER MAY REDUCE OR SET ASIDE A CIVIL**
12 **PENALTY.**

13 (F) **THE COMMISSIONER SHALL PAY ALL CIVIL PENALTIES COLLECTED**
14 **UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.**

15 **6-906.2.**

16 (A) **IN THIS SECTION, “EXTRAORDINARY CIRCUMSTANCES” MEANS A**
17 **SITUATION PRESENTING SPECIFIC CONCERNS ABOUT THE PROMPT**
18 **WITHDRAWAL OF MONEY FROM, OR THE SAFETY AND SOUNDNESS OF, A CREDIT**
19 **UNION.**

20 (B) **IN EXTRAORDINARY CIRCUMSTANCES AND WITH THE CONSENT OF**
21 **THE CREDIT UNION, THE COMMISSIONER MAY CLOSE TO THE PUBLIC A**
22 **HEARING CONCERNING THE ASSESSMENT OF A CIVIL PENALTY, AN ORDER TO**
23 **CEASE AND DESIST, OR ANY OTHER FORMAL ENFORCEMENT ACTION BY THE**
24 **COMMISSIONER.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act does not limit
26 the authority of an out-of-state bank to establish additional branches in this State as
27 permitted under the federal Riegle-Neal Interstate Banking and Branching Efficiency
28 Act of 1994, including the provisions of the Act codified as 12 U.S.C. §§ 36(d), (e)(1),
29 and (g)(2)(B), 1828 (d)(4)(B)(ii), and 1831u(d)(2), if the out-of-state bank’s application
30 to establish a branch in this State is approved by the Federal Deposit Insurance
31 Corporation or the Office of the Comptroller of the Currency before July 1, 2009.

32 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
33 effect July 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.