

CHAPTER 741

(House Bill 1555)

AN ACT concerning

Financial Institutions – Enhanced Supervision – Branch Banking

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

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

BY repealing and reenacting, without amendments,
Article – Financial Institutions
Section 2-108(b), 5-808(a), and 6-906(a)
Annotated Code of Maryland
(2003 Replacement Volume and 2008 Supplement)

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

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

Article – Financial Institutions

2-108.

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

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

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

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

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

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

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

5-808.

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

(1) An unsafe or unsound banking practice;

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

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

5-808.1.

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

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

(2) ENGAGED IN:

(I) AN UNSAFE OR UNSOUND BANKING PRACTICE; OR

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

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

(B) THE CIVIL PENALTY MAY NOT EXCEED:

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

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

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

(2) THE NOTICE OF ASSESSMENT SHALL STATE THE:

(I) AMOUNT OF THE CIVIL PENALTY;

(II) LEGAL AUTHORITY FOR THE ASSESSMENT; AND

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

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

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

(1) THE SERIOUSNESS OF THE VIOLATION;

(2) THE GOOD FAITH OF THE VIOLATOR;

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

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

(5) THE ASSETS OF THE VIOLATOR; AND

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

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

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

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

5-808.2.

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

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

5-1003.

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

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

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

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

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

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

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

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

5-1005.

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

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

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

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

5-1006.

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

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

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

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

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

(2) THE COMMISSIONER MAY:

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

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

6-906.

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

(1) An unsafe or unsound practice;

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

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

6-906.1.

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

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

(2) ENGAGED IN:

(I) AN UNSAFE OR UNSOUND PRACTICE; OR

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

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

(B) THE CIVIL PENALTY MAY NOT EXCEED:

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

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

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

(2) THE NOTICE OF ASSESSMENT SHALL STATE THE:

(I) AMOUNT OF THE CIVIL PENALTY;

(II) LEGAL AUTHORITY FOR THE ASSESSMENT; AND

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

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

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

(1) THE SERIOUSNESS OF THE VIOLATION;

(2) THE GOOD FAITH OF THE VIOLATOR;

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

(4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC AND THE CREDIT UNION INDUSTRY;

(5) THE ASSETS OF THE VIOLATOR; AND

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

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

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

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

6-906.2.

(A) IN THIS SECTION, "EXTRAORDINARY CIRCUMSTANCES" MEANS A SITUATION PRESENTING SPECIFIC CONCERNS ABOUT THE PROMPT WITHDRAWAL OF MONEY FROM, OR THE SAFETY AND SOUNDNESS OF, A CREDIT UNION.

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

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

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

Approved by the Governor, May 19, 2009.