

Chapter 457

(House Bill 1136)

AN ACT concerning

Financial Institutions – Supervision and Reorganization

FOR the purpose of requiring certain trust companies to pledge certain securities or deliver a certain surety bond to the Commissioner of Financial Regulation to defray the costs of a certain receivership; ~~authorizing~~ requiring the Commissioner to determine the amount of the securities or surety bond, subject to ~~a certain maximum amount~~ amounts; authorizing the Commissioner or a certain receiver to reduce the pledged securities or surety bond to cash to pay certain costs under certain circumstances; requiring certain securities pledged by a nondepository trust company to be held at a certain institution or bank; authorizing the Commissioner to specify the types of securities that may be pledged; establishing that certain fees are the responsibility of a nondepository trust company; providing that securities pledged by a nondepository trust company may not be assets relied on by the nondepository trust company for a certain purpose; requiring any income earned on certain securities to be paid to the nondepository trust company; requiring a certain surety bond to be issued by a certain bonding company and in a certain form; establishing procedures for the conversion of a federal mutual savings bank to a Maryland-chartered savings bank; requiring the Commissioner to charge and collect certain fees for a conversion of a federal mutual savings bank into a savings bank under certain provisions of this Act; authorizing the Commissioner to take possession of a nondepository trust company if the Commissioner determines that ~~a certain emergency exists~~ the nondepository trust company is insolvent; providing that certain expenses of the Commissioner that are court approved and related to the Commissioner's possession of a nondepository trust company shall be paid from the assets of the nondepository trust company and, the proceeds of the sale of certain ~~bonds securities, or payment on the recovery against~~ a certain surety bond; providing that certain proceeds of a sale of pledged securities shall be an asset of a nondepository trust company; ~~authorizing the Commissioner~~ a certain receiver to appoint certain individuals and retain certain officers and employees as needed to carry out the receivership of a nondepository trust company, and requiring that the salaries and certain other expenses of those individuals, officers, and employees be paid ~~out of the funds~~ from the assets of the trust nondepository trust company, as well as the proceeds of the sale of certain ~~bonds securities, or payment on the recovery against~~ a certain surety bond; defining certain terms; and generally relating to the supervision of certain trust companies and the reorganization of certain savings banks.

BY repealing and reenacting, with amendments,

Article – Financial Institutions
 Section ~~2–108(a)(4)~~, 3–101, 5–101, and 5–606
 Annotated Code of Maryland
 (2003 Replacement Volume and 2009 Supplement)

BY adding to

Article – Financial Institutions
 Section 3–211.1, 4–701.1, 5–602.1, and 5–604.1
 Annotated Code of Maryland
 (2003 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, without amendments,

Article – Financial Institutions
 Section 5–601 and 5–602
 Annotated Code of Maryland
 (2003 Replacement Volume and 2009 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:

(4) A fee for a conversion of a national banking association, a federal stock savings and loan association, or a federal stock savings bank into a commercial bank under § 3–801 of this article OR A FEDERAL MUTUAL SAVINGS BANK INTO A SAVINGS BANK UNDER § 4–701.1 OF THIS ARTICLE:

- | | | |
|------|-----------------------|---------|
| (i) | Filing fee..... | \$7,000 |
| (ii) | Examination fee | \$3,000 |

3–101.

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

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

(c) “Debt instrument” means any capital note, debenture, bond, or certificate of beneficial interest issued by a commercial bank.

(d) "Inhabitants" means the population of a municipal area, as determined by the latest federal or State census.

(E) "NONDEPOSITORY TRUST COMPANY" MEANS A TRUST COMPANY THAT IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

[(e)] (F) "State bank" means an institution that is incorporated under the laws of this State as a bank.

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

3-211.1.

(A) IN THIS SECTION, "RECEIVERSHIP" MEANS A PROCEEDING IN WHICH:

(1) THE COMMISSIONER TAKES POSSESSION OF A NONDEPOSITORY TRUST COMPANY IN ACCORDANCE WITH § 5-601, § 5-602, OR § 5-602.1 OF THIS ARTICLE; AND

(2) A RECEIVER IS APPOINTED IN ACCORDANCE WITH § 5-605 OF THIS ARTICLE.

~~(A) (B) (1) IN ADDITION TO THE MINIMUM CAPITAL REQUIREMENTS OF § 3-209 OF THIS SUBTITLE, A~~ A NONDEPOSITORY TRUST COMPANY SHALL PLEDGE TO THE COMMISSIONER, FOR THE BENEFIT OF THE COMMISSIONER, SECURITIES OR DELIVER A SURETY BOND TO THE COMMISSIONER, FOR THE BENEFIT OF THE COMMISSIONER, TO DEFRAY THE COSTS OF A RECEIVERSHIP OF THE NONDEPOSITORY TRUST COMPANY IN THE EVENT IT SHOULD FAIL.

(2) THE AMOUNT OF THE SECURITIES OR SURETY BOND SHALL BE DETERMINED BY THE COMMISSIONER IN AN AMOUNT THAT THE COMMISSIONER DEEMS APPROPRIATE TO DEFRAY SUCH COSTS, BUT IN NO EVENT SHALL THE AMOUNT EXCEED ~~\$3,000,000~~:

(I) \$1,000,000 FOR A NONDEPOSITORY TRUST COMPANY WITH A COMPOSITE RATING, USING THE UNIFORM INTERAGENCY TRUST RATING SYSTEM, OF 1 OR 2; OR

(II) \$3,000,000 FOR A NONDEPOSITORY TRUST COMPANY WITH A COMPOSITE RATING, USING THE UNIFORM INTERAGENCY TRUST RATING SYSTEM, OF 3, 4, OR 5.

~~(B)~~ (C) ~~IN SUBJECT TO THE PROVISIONS OF TITLE 5, SUBTITLE 6 OF THIS ARTICLE, IN THE EVENT OF A RECEIVERSHIP OF A NONDEPOSITORY TRUST COMPANY,~~ THE COMMISSIONER OR A RECEIVER APPOINTED UNDER § 5-605 OF THIS ARTICLE MAY, WITHOUT REGARD TO ANY PRIORITIES, PREFERENCES, OR ADVERSE CLAIMS, REDUCE THE PLEDGED SECURITIES OR THE SURETY BOND TO CASH AND, ~~AS SOON AS PRACTICABLE,~~ USE THE CASH TO DEFRAY THE COSTS ASSOCIATED WITH THE RECEIVERSHIP.

~~(C)~~ (D) (1) IF A NONDEPOSITORY TRUST COMPANY CHOOSES TO PLEDGE SECURITIES TO SATISFY THE REQUIREMENT OF SUBSECTION ~~(A)~~ (B) OF THIS SECTION, THE SECURITIES SHALL BE HELD AT A DEPOSITORY INSTITUTION OR A FEDERAL RESERVE BANK APPROVED BY THE COMMISSIONER.

(2) THE COMMISSIONER MAY SPECIFY THE TYPES OF SECURITIES THAT MAY BE PLEDGED.

(3) ANY FEES ASSOCIATED WITH HOLDING ~~SUCH~~ PLEDGED SECURITIES SHALL BE THE RESPONSIBILITY OF THE NONDEPOSITORY TRUST COMPANY.

(4) SECURITIES PLEDGED BY A NONDEPOSITORY TRUST COMPANY MAY NOT BE ASSETS RELIED ON BY THE NONDEPOSITORY TRUST COMPANY TO MEET THE MINIMUM CAPITAL REQUIREMENTS OF § 3-209 OF THIS SUBTITLE.

(5) ANY INCOME EARNED ON SECURITIES PLEDGED BY A NONDEPOSITORY TRUST COMPANY:

(I) SHALL BE PAID TO THE NONDEPOSITORY TRUST COMPANY; AND

(II) MAY NOT BE HELD BY THE COMMISSIONER.

~~(D)~~ (E) (1) IF A NONDEPOSITORY TRUST COMPANY CHOOSES TO PURCHASE A SURETY BOND TO SATISFY THE REQUIREMENT OF SUBSECTION ~~(A)~~ (B) OF THIS SECTION, THE SURETY BOND SHALL BE ISSUED BY A BONDING COMPANY THAT:

(I) IS APPROVED BY THE COMMISSIONER;

~~(II)~~ IS AUTHORIZED TO DO BUSINESS IN THIS STATE; AND

~~(III)~~ (II) HAS A RATING IN ONE OF THE THREE HIGHEST GRADES AS DETERMINED BY A NATIONAL RATING SERVICE.

(2) THE SURETY BOND SHALL BE IN A FORM APPROVED BY THE COMMISSIONER.

(3) ~~THE~~ A NONDEPOSITORY TRUST COMPANY MAY NOT OBTAIN A SURETY BOND FROM ANY ~~ENTITY IN WHICH IT HAS A FINANCIAL INTEREST AFFILIATE, AS DEFINED IN § 5-401 OF THIS ARTICLE.~~

4-701.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “CONVERTING INSTITUTION” MEANS A FEDERAL MUTUAL SAVINGS BANK.

(3) “FEDERAL MUTUAL SAVINGS BANK” MEANS AN INSTITUTION THAT:

(I) IS INCORPORATED UNDER FEDERAL LAW AS A SAVINGS BANK; AND

(II) IS A MUTUAL ASSOCIATION.

(B) A CONVERTING INSTITUTION THAT IS LOCATED IN THIS STATE MAY CONVERT INTO A SAVINGS BANK AS PROVIDED BY FEDERAL LAW AND THIS SECTION.

(C) (1) THE CONVERTING INSTITUTION SHALL MEET THE REQUIREMENTS OF THIS TITLE FOR THE INCORPORATION OF A SAVINGS BANK.

(2) THE PROCEDURES FOR INCORPORATION MAY BE MODIFIED AS REQUIRED BY THE DIFFERENCE BETWEEN INCORPORATION AND CONVERSION.

(3) IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE COMMISSIONER, ANY INTERESTED PERSON MAY REQUEST THAT THE COMMISSIONER CONDUCT A HEARING REGARDING THE CONVERSION.

(D) (1) THE BOARD OF DIRECTORS OF THE CONVERTING INSTITUTION SHALL SIGN, ACKNOWLEDGE, AND FILE ARTICLES OF INCORPORATION.

(2) THE ARTICLES OF INCORPORATION SHALL STATE THAT THE CONVERSION HAS BEEN APPROVED BY THE MEMBERS OR BOARD OF DIRECTORS IN THE MANNER REQUIRED BY SUBSECTION (E) OF THIS SECTION.

(E) THE CONVERSION SHALL BE APPROVED AT A MEETING CALLED FOR THAT PURPOSE, BY THE AFFIRMATIVE VOTE OF:

(1) TWO-THIRDS OF THE MEMBERS OF THE CONVERTING INSTITUTION, VOTING IN PERSON OR BY PROXY; OR

(2) IF THERE ARE NO MEMBERS, THE BOARD OF DIRECTORS OF THE CONVERTING INSTITUTION.

(F) THE NEW SAVINGS BANK RESULTING FROM THE CONVERSION:

(1) SHALL BE CONSIDERED THE SAME BUSINESS AND CORPORATE ENTITY AS THE CONVERTING INSTITUTION; AND

(2) EXCEPT AS LIMITED BY THIS ARTICLE OR BY ITS CHARTER OR BYLAWS, HAS ALL OF THE RIGHTS, POWERS, AND DUTIES OF THE CONVERTING INSTITUTION.

(G) THE CONVERTING INSTITUTION'S RIGHTS, FRANCHISES, AND INTERESTS IN ANY PROPERTY BECOME THE PROPERTY OF THE NEW SAVINGS BANK, SUBJECT TO THE LIABILITIES OF THE CONVERTING INSTITUTION THAT EXIST AT THE TIME OF THE CONVERSION.

(H) UNLESS THIS CONSTRUCTION WOULD BE UNREASONABLE, ANY REFERENCE TO THE CONVERTING INSTITUTION IN ANY WRITING, WHETHER EXECUTED OR TAKING EFFECT BEFORE OR AFTER THE CONVERSION, SHALL BE INTERPRETED AS A REFERENCE TO THE NEW SAVINGS BANK.

(I) IF A CONVERTING INSTITUTION HAS ASSETS OR ENGAGES IN BUSINESS ACTIVITIES THAT DO NOT CONFORM TO THE LAW GOVERNING SAVINGS BANKS, THE COMMISSIONER MAY ALLOW A REASONABLE TIME FOR THE NEW SAVINGS BANK TO CONFORM TO THAT LAW.

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.

(d) “Examiner” means:

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

(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.

(F) “NONDEPOSITORY TRUST COMPANY” MEANS A TRUST COMPANY THAT IS NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION.

[(f)] (G) “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.

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

5-601.

(a) The board of directors of any banking institution may place the banking institution, including its property, records, and business, in the hands of the Commissioner by posting on the front door of each banking office of the institution a notice that states: “This institution is in the hands of the Maryland Commissioner of Financial Regulation”.

(b) The banking institution immediately shall notify the Commissioner of its action, and the Commissioner immediately shall take possession of the institution.

5-602.

(a) (1) If the Commissioner finds that the capital stock account of any commercial bank is impaired because of a loss or for any other reason, the Commissioner, by notice to the board of directors of the commercial bank, may require the commercial bank to correct the impairment.

(2) If the commercial bank fails to correct the impairment within 3 months after the board receives the notice, the Commissioner may take possession of the commercial bank, including its property, records, and business.

(b) (1) If the reserves of any commercial bank fall below the amount required under this article:

(i) The commercial bank may not increase its loans or discounts until the deficiency is corrected, except by discounting or buying drafts payable at sight or on demand; and

(ii) The Commissioner, by notice to the board of directors of the commercial bank, shall require the commercial bank to correct the deficiency.

(2) If the commercial bank fails to correct the deficiency within 30 days after the board receives the notice, the Commissioner may take possession of the commercial bank, including its property, records, and business.

5-602.1.

(A) IN THIS SECTION, “INSOLVENT” MEANS:

- (1) INCAPABLE OF MEETING THE DEMANDS OF CREDITORS; OR**
- (2) HAVING LIABILITIES THAT EXCEED ASSETS.**

(B) NOTWITHSTANDING THE NOTICE AND TIMING REQUIREMENTS IN § 5-602 OF THIS SUBTITLE, IF THE COMMISSIONER DETERMINES THAT ~~AN EMERGENCY EXISTS AS DESCRIBED IN SUBSECTION (C) OF THIS SECTION~~ A NONDEPOSITORY TRUST COMPANY IS INSOLVENT, THE COMMISSIONER MAY TAKE IMMEDIATE POSSESSION OF ~~A~~ THE NONDEPOSITORY TRUST COMPANY, INCLUDING ITS PROPERTY, RECORDS, AND BUSINESS, BY ~~POSTING~~:

(1) POSTING ON THE FRONT DOOR OF EACH BANKING OFFICE OF THE ~~INSTITUTION~~ NONDEPOSITORY TRUST COMPANY A NOTICE THAT STATES: “THIS INSTITUTION IS IN THE HANDS OF THE ~~MARYLAND COMMISSIONER OF FINANCIAL REGULATION.~~” MARYLAND COMMISSIONER OF FINANCIAL REGULATION”; AND

(2) IMMEDIATELY DELIVERING WRITTEN NOTICE TO THE BOARD OF DIRECTORS OF THE NONDEPOSITORY TRUST COMPANY THAT THE COMMISSIONER HAS TAKEN POSSESSION OF THE NONDEPOSITORY TRUST COMPANY.

~~(c) THE COMMISSIONER MAY DETERMINE THAT AN EMERGENCY EXISTS IF A NONDEPOSITORY TRUST COMPANY:~~

~~(1) IS CONDUCTING ITS BUSINESS IN AN UNLAWFUL OR UNSOUND MANNER THAT MAY RESULT IN SERIOUS LOSSES TO ITS CUSTOMERS OR CREDITORS;~~

~~(2) IS UNABLE TO CONTINUE NORMAL OPERATIONS;~~

~~(3) HAS OBSTRUCTED OR IMPEDED AN EXAMINATION PERMITTED UNDER § 5-201 OF THIS TITLE WHERE THE COMMISSIONER HAS A REASONABLE BASIS TO BELIEVE THAT THE NONDEPOSITORY TRUST COMPANY IS CONDUCTING ITS BUSINESS IN AN UNLAWFUL OR UNSOUND MANNER THAT MAY RESULT IN SERIOUS LOSSES TO ITS CUSTOMERS OR CREDITORS;~~

~~(4) HAS REFUSED TO ALLOW AN EXAMINATION AS PERMITTED UNDER § 5-201 OF THIS TITLE; OR~~

~~(5) IS INSOLVENT.~~

5-604.1.

(A) ALL NECESSARY AND REASONABLE EXPENSES OF THE COMMISSIONER THAT ARE COURT APPROVED AND RELATED TO THE COMMISSIONER'S POSSESSION OF A NONDEPOSITORY TRUST COMPANY, INCLUDING COSTS ASSOCIATED WITH THE RECEIVERSHIP, REORGANIZATION, OR LIQUIDATION OF THE NONDEPOSITORY TRUST COMPANY, SHALL BE PAID TO THE COMMISSIONER FROM THE ASSETS OF THE NONDEPOSITORY TRUST COMPANY, IN ADDITION TO THE PROCEEDS OF THE SALE OF SECURITIES OR THE PAYMENT ON PLEDGED UNDER § 3-211.1 OF THIS ARTICLE, OR RECOVERY AGAINST A SURETY BOND REQUIRED DELIVERED UNDER § 3-211.1 OF THIS ARTICLE.

(B) ANY PROCEEDS OF A SALE OF PLEDGED SECURITIES THAT REMAIN AFTER MAKING THE PAYMENTS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION AND § 5-606(B)(2) OF THIS SUBTITLE SHALL BE AN ASSET OF THE NONDEPOSITORY TRUST COMPANY.

5-606.

(a) (1) The receiver may appoint any clerks needed to carry out the receivership.

(2) The salaries of these clerks shall be paid out of the funds of the banking institution.

(B) (1) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, THE RECEIVER OF A NONDEPOSITORY TRUST COMPANY MAY, AS NEEDED TO CARRY OUT THE RECEIVERSHIP:

(I) APPOINT ANY CLERKS, AGENTS, COUNSEL, EMPLOYEES, AND ASSISTANTS; AND

(II) RETAIN OFFICERS AND EMPLOYEES OF THE NONDEPOSITORY TRUST COMPANY.

(2) THE SALARIES AND ALL OTHER EXPENSES OF THE INDIVIDUALS SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION THAT ARE COURT APPROVED SHALL BE PAID ~~OUT OF THE FUNDS~~ FROM THE ASSETS OF THE NONDEPOSITORY TRUST COMPANY, IN ADDITION TO THE PROCEEDS OF THE SALE OF SECURITIES OR THE PAYMENT ON PLEDGED UNDER § 3-211.1 OF THIS ARTICLE, OR RECOVERY AGAINST A SURETY BOND ~~REQUIRED~~ DELIVERED UNDER § 3-211.1 OF THIS ARTICLE.

(3) ANY PROCEEDS OF A SALE OF PLEDGED SECURITIES THAT REMAIN AFTER MAKING THE PAYMENTS REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION AND § 5-604.1(A) OF THIS SUBTITLE SHALL BE AN ASSET OF THE NONDEPOSITORY TRUST COMPANY.

[(b)] (C) The receiver may borrow money and, with the approval of the court, pledge, mortgage, or encumber any of the institution's assets to:

- (1) Pay the obligations of the institution;
- (2) Pay dividends to the depositors or creditors of the institution; or
- (3) Enable the institution to reopen or reorganize.

[(c)] (D) (1) The receiver shall file with the court, in the form that the court requires, an itemized account of:

- (i) All receipts, disbursements, and expenses; and

(ii) Any proposed distribution.

(2) The court shall accept the account to the same extent as if an auditor of the court had prepared and filed the account.

[(d)] (E) (1) Except as provided in paragraph (2) of this subsection, the receiver may not make any distribution until the court ratifies the receiver's account.

(2) With the approval of the court, the receiver may pay in full each creditor whose total claims do not exceed \$5.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 4, 2010.