

2013 -- S 0717

=====
LC01384
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO FINANCIAL INSTITUTIONS

Introduced By: Senators Gallo, and Lynch

Date Introduced: March 13, 2013

Referred To: Senate Commerce

(Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-1-1 and 19-1-3 of the General Laws in Chapter 19-1 entitled
2 "Definitions and Establishment of Financial Institutions" are hereby amended to read as follows:

3 **19-1-1. Definitions.** -- Unless otherwise specified, the following terms shall have the
4 following meanings throughout this title:

5 (1) "Agreement to form" means the agreement to form a financial institution or the
6 agreement to form a credit union, as applicable, pursuant to this title, and includes, for financial
7 institutions organized before December 31, 1995, the articles of incorporation or the agreement of
8 association of the financial institution, where applicable.

9 ~~(2) "Board of bank incorporation" means the board of bank incorporation as constituted~~
10 ~~under this title or the predecessor of the board of bank incorporation.~~

11 ~~(3)~~(2) "Branch" means any office or place of business, other than the main office or
12 customer-bank-communication-terminal outlets as provided for in this title, at which deposits are
13 received, or checks paid or money lent, or at which any trust powers are exercised. Any financial
14 institution which had, on or before June 30, 2003, established an office or place of business, other
15 than its main office, at which trust powers are exercised, shall not be required to obtain the
16 approval of the director or the director's designee pursuant to section 19-2-11 of the general laws
17 in chapter 2 of title 19 for any such offices established as of that date.

18 ~~(4)~~(3) "Credit union" means a credit union duly organized under the laws of this state.

19 ~~(5)~~(4) "Director" means the director of the department of business regulation.

1 ~~(6)~~(5) "Division of banking" means the division within the department of business
2 regulation responsible for the supervision and examination of regulated institutions and/or
3 licensees under chapter 14 of this title.

4 ~~(7)~~(6) "Federal credit union" means a credit union duly organized under the laws of the
5 United States.

6 ~~(8)~~(7) "Financial institution" means any entity, other than a credit union, duly organized
7 under the laws of this state which has the statutory authority to accept money on deposit pursuant
8 to title 19, including an entity which is prohibited from accepting deposits by its own by-laws or
9 agreement to form; the term includes, but is not limited to banks, trust companies, savings banks,
10 loan and investment banks and savings and loan associations.

11 ~~(9)~~(8) "Main office" means, in the case of financial institutions or credit unions, the
12 location stated in the agreement to form, as amended, and, otherwise, the location recognized by
13 the institution's primary banking regulator as its main office.

14 ~~(10)~~(9) "Person" means individuals, partnerships, corporations, limited liability
15 companies or any other entity however organized.

16 ~~(11)~~(10) "Regulated institution" means any financial institution, credit union or other
17 insured-deposit-taking institution which is authorized to do business in this state including one
18 authorized by operation of an interstate banking statute which allowed its original entry.

19 ~~(12)~~(11) "Retail installment contract" means any security agreement negotiated or
20 executed in this state or under the laws of this state including, but not limited to, any agreement in
21 the nature of a mortgage, conditional sale contract, or any other agreement whether or not
22 evidenced by any written instrument to pay the retail purchase price of goods, or any part thereof,
23 in installments over any period of time and pursuant to which any security interest is retained or
24 taken by the retail seller for the payment of the purchase price, or any part thereof, of the retail
25 installment contract.

26 ~~(13)~~(12) "Retail seller" means any person who sells or contracts to sell any goods under
27 a retail installment contract to a retail buyer.

28 ~~(14)~~(13) "Superintendent" means the associate director and superintendent of banking in
29 the department of business regulation.

30 ~~(15)~~(14) "Unimpaired capital" means the sum of all capital and allowance accounts
31 minus estimated losses on assets, calculated in accordance with generally accepted accounting
32 principles.

33 **19-1-3. Applications -- General.** -- (a) ~~The director or the director's designee shall~~
34 ~~assume and exercise all powers and duties of the board of bank incorporation relative to~~ All

1 applications filed by regulated institutions shall be made to the director or the director's designee
2 with other than the exceptions set forth in this title. ~~All applications filed with the division of~~
3 ~~banking shall be acted upon by the director or the director's designee, in writing.~~

4 (b) The director or the director's designee shall cause notice of applications filed to be
5 published ~~for three (3) consecutive weeks in a newspaper of general circulation on the~~
6 department's website and by any other method deemed by the director or the director's designee
7 to communicate with persons who are or may be interested in the application. ~~which~~ The notice
8 shall include a provision allowing for a public comment period. During this period, the
9 application shall be open for public inspection at the division of banking. If, at the end of the
10 public comment period, there are no objectors to the application, the director or the director's
11 designee may approve or deny the application. If there are any objectors, the director or the
12 director's designee ~~shall~~ may hold a public hearing to take testimony, under oath, and after
13 considering this testimony, shall approve or deny the application. Any applicant aggrieved by any
14 order regarding an application may appeal pursuant to the provisions of chapter 35 of title 42.

15 (c) The superintendent shall collect a filing fee with respect to applications submitted to
16 the division of banking for consideration. All fees pursuant to this section shall be paid to the
17 director for the use of the state. The fees to be charged for each type of application shall be
18 established by the division of banking by regulation. ~~The division of banking shall publish a~~
19 ~~notice, in a newspaper of general circulation, of a proposed fee structure, receive comments on~~
20 ~~the proposal and establish the fees at a public hearing, the date of which shall be contained in the~~
21 ~~notice of publication.~~

22 (d) The superintendent is hereby authorized to promulgate rules and regulations for the
23 implementation of this section, including, but not limited to, the establishment of specific time
24 periods within which a decision for the various types of applications must be rendered by the
25 division of banking.

26 (e) Any party adversely affected by a decision of the director or the director's designee
27 may make written demand upon the director or the director's designee within thirty (30) days
28 notification of the decision from which the party is appealing. ~~concerning an agreement to form~~
29 ~~or an application filed for interstate mergers, interstate acquisitions or interstate branches may~~
30 ~~appeal the director's or the director's designee's decision by filing an application of appeal with~~
31 ~~the board of bank incorporation within ten (10) days after the issuance of the decision. The board~~
32 ~~of bank incorporation shall thereupon review the decision considering the public interest, the~~
33 ~~public convenience and advantage, the effect on the tax base of the state and the effect on the~~
34 ~~citizens of the state and issue its own decision which shall govern.~~ A hearing conducted pursuant

1 [to this section shall be conducted pursuant to the Administrative Procedures Act, chapter 42-35.](#)

2 (f) Anyone adversely affected by a decision of the [director or the director's designee](#)
3 ~~board of bank incorporation~~ may appeal the decision by filing an appeal with the superior court
4 [pursuant to section 42-35-15 of the general laws](#) ~~within thirty (30) days after entry of decision. A~~
5 ~~copy of the notice of appeal shall be forthwith served upon the legal counsel/clerk of the board of~~
6 ~~bank incorporation. The board of bank incorporation shall certify and file in the court a copy of~~
7 ~~the record upon which the decision was entered within thirty (30) days after receipt of the notice~~
8 ~~of appeal.~~

9 SECTION 2. Section 19-1-2 of the General Laws in Chapter 19-1 entitled "Definitions
10 and Establishment of Financial Institutions" is hereby repealed.

11 ~~**19-1-2. Board of bank incorporation.** --- (a) (i) There is hereby authorized, created and~~
12 ~~established within the department of business regulation a five (5) member board of bank~~
13 ~~incorporation, (hereinafter the "board"), all of whom shall be voting members and serve without~~
14 ~~compensation. Three (3) who serve as ex officio shall be the director of the department of~~
15 ~~business regulation (hereinafter the "director") or his or her designee, the general treasurer or his~~
16 ~~or her designee, and the attorney general or his or her designee. The other two (2) members of the~~
17 ~~board shall be members of the general public qualified by training or experience in the fields of~~
18 ~~finance or banking, appointed by the governor with the advice and consent of the senate. In~~
19 ~~appointing public members pursuant to this section, the governor shall solicit and give due~~
20 ~~consideration of the recommendations of the general treasurer with respect thereto. The designee~~
21 ~~of a member serving as ex officio shall be a subordinate from within the department of the ex-~~
22 ~~officio member and shall represent him or her at all meetings of the board. No one shall be~~
23 ~~eligible for public appointment unless he or she is a resident of this state. The board shall elect a~~
24 ~~chair and may elect from among its own members such other officers as they deem necessary.~~

25 ~~(ii) The board is a public policy appellate board established to consider appeals from a~~
26 ~~decision of the director or the director's designee concerning major banking matters which affect~~
27 ~~the citizens and tax base of the state and to exercise the powers and perform the duties conferred~~
28 ~~or imposed upon it by this title.~~

29 ~~(iii) Newly appointed and qualified public members and designees of ex officio~~
30 ~~members shall, within six (6) months of their qualification or designation, attend a training course~~
31 ~~that shall be developed with board approval and conducted by the director or his or her designee~~
32 ~~and shall include instruction in the provisions of chapters 19-1, 42-46, 36-14, and 38-2 of Rhode~~
33 ~~Island general laws; and the board's rules and regulations. The director of the department of~~
34 ~~administration shall, within ninety (90) days of the effective date of this act, prepare and~~

1 ~~disseminate training materials relating to the provisions of chapters 42-46, 36-14 and 38-2.~~

2 ~~(iv) Public members of the board shall be removable by the appointing authority for~~
3 ~~cause only, and removal solely for partisan or personal reasons unrelated to capacity or fitness for~~
4 ~~the office shall be unlawful.~~

5 ~~(v) Three (3) members of the board of bank incorporation shall constitute a quorum for~~
6 ~~the transaction of business. A majority vote of those present shall be required for action. No~~
7 ~~vacancy in the membership of the board shall impair the right of a quorum to exercise all of the~~
8 ~~rights and perform all of the duties of the board. Any vacancy which may occur in the board shall~~
9 ~~be filled by the governor with the advice and consent of the senate, for the remainder of the~~
10 ~~unexpired term in the same manner as the member's predecessor as prescribed in this section.~~

11 ~~(vi) Those members of the board as of the effective date of this act who are members of~~
12 ~~the general assembly shall cease to be members of the board on the effective date of this act, and~~
13 ~~the governor shall thereupon nominate one new member who shall serve an initial term of three~~
14 ~~(3) years and one new member who shall serve an initial term of four (4) years. Thereafter, all~~
15 ~~appointed members of the board shall be appointed to terms of four (4) years and be eligible for~~
16 ~~reappointment.~~

17 ~~(b) (i) The board of bank incorporation may adopt, and amend from time to time, rules~~
18 ~~and regulations for the orderly conduct of its affairs and for the administration of its duties~~
19 ~~pursuant to this title. The board of bank incorporation shall collect a filing fee with respect to~~
20 ~~applications submitted to it. All fees pursuant to this section shall be paid to the director, to and~~
21 ~~for the use of the board of bank incorporation. The fees to be charged for each type of application~~
22 ~~shall be established annually at the board of bank incorporation's first public hearing. The board~~
23 ~~of bank incorporation shall publish notice of its proposed fee structure at least once a week for~~
24 ~~three (3) successive weeks in a newspaper of general circulation.~~

25 ~~(ii) Within ninety (90) days after the end of each fiscal year during which the board has~~
26 ~~conducted business, the board shall approve and submit an annual report to the governor, the~~
27 ~~speaker of the house of representatives, the president of the senate, and the secretary of state of its~~
28 ~~activities during that fiscal year. The report shall provide: an operating statement summarizing~~
29 ~~meetings or hearings held, meeting minutes if requested, subjects addressed, decisions rendered,~~
30 ~~rules or regulations promulgated, studies conducted, policies and plans developed, approved, or~~
31 ~~modified, and programs administered or initiated; a consolidated financial statement of all funds~~
32 ~~received and expended including the source of the funds, a listing of any staff supported by these~~
33 ~~funds, and a summary of any clerical, administrative or technical support received; a summary of~~
34 ~~performance during the previous fiscal year including accomplishments, shortcomings and~~

1 ~~remedies; a synopsis of hearings, complaints, suspensions, or other legal matters related to the~~
2 ~~authority of the board; a summary of any training courses held pursuant to subsection 19-1-~~
3 ~~2(a)(iv); a briefing on anticipated activities in the upcoming fiscal year; and findings and~~
4 ~~recommendations for improvements. The report shall be posted electronically on the general~~
5 ~~assembly and the secretary of state's websites as prescribed in section 42-20-8.2 of the Rhode~~
6 ~~Island general laws. The director of the department of administration shall be responsible for the~~
7 ~~enforcement of this provision.~~

8 SECTION 3. Section 19-2-3 of the General Laws in Chapter 19-2 entitled "Creation and
9 Expansion" is hereby amended to read as follows:

10 **19-2-3. Application to form financial institution -- Issuance or denial of certificate. --**

11 The subscribers to the agreement to form shall make application to the director or the director's
12 designee for a certificate that public convenience and advantage will be promoted by the
13 establishment of the financial institution, which certificate the director or the director's designee
14 is hereby authorized to grant. The decision on the certificate may be appealed ~~to the board of~~
15 ~~bank incorporation~~ pursuant to ~~this title~~ [chapter 19-1](#).

16 SECTION 4. Section 19-4-12 of the General Laws in Chapter 19-4 entitled "Regulatory
17 Oversight" is hereby amended to read as follows:

18 **19-4-12. Order to cease unlawful or unsafe practices -- Impairment of capital --**

19 **Appeal. --** (a) Whenever it appears to the director or the director's designee that a regulated
20 institution has violated its agreement to form, or any law or regulation, or is conducting its
21 business in an unauthorized or unsafe manner, or the regulated institution has been notified by its
22 federal deposit insurer of its intent to terminate deposit insurance, the director or the director's
23 designee may exercise any or all of the following powers:

24 (1) Restrict the withdrawal of deposits when he or she finds the restriction necessary for
25 the protection of depositors;

26 (2) Order any person to cease violating any provision of the banking laws of this state or
27 any rule or regulation issued thereunder, or cease engaging in any unsafe or unsound or deceptive
28 banking or credit union practices;

29 (3) Order that capital be restored, to the extent that the capital of the financial institution
30 or credit union has been impaired;

31 (4) Suspend or remove any director, committee member, officer, or employee who
32 becomes ineligible to hold his or her position or who, after receipt of an order to cease under this
33 chapter, violates the banking laws of this state or a rule, regulation, or order issued thereunder, or
34 who is reckless or incompetent in the conduct of the financial institution's or credit union's

1 business. Each suspension or removal order shall specify the grounds therefor, and a copy of the
2 order shall be sent to the financial institution or credit union concerned.

3 (b) Any action taken pursuant to subsection (a) may be taken in the director's or the
4 director's designee's discretion before or after affording the regulated institution and/or affected
5 individuals an opportunity for hearing. When an action is not preceded by an opportunity for
6 hearing, such an opportunity must be afforded to the regulated institution and/or affected
7 individuals within a reasonable time after the action; provided further, that a request for hearing
8 subsequent to an action by the director or the director's designee shall not act to stay the action of
9 the director or the director's designee pending the outcome of the hearing, although the director or
10 the director's designee may, in his or her discretion, grant a stay. All hearings shall be conducted
11 pursuant to the Administrative Procedures Act, chapter 42-35.

12 ~~(c) Whenever the regulated institution fails to comply with an order of the director or the~~
13 ~~director's designee, or file required reports, or fails to pay any final judgment recovered against it~~
14 ~~in any court of this state within sixty (60) days after the rendition of the order, or pay fees or~~
15 ~~forfeitures, or do any other act required under this title, the superintendent may give notice to the~~
16 ~~board of bank incorporation and the regulated institution of those failures and may request that~~
17 ~~the regulated institution's right to do business be suspended. The board of bank incorporation~~
18 ~~shall hold a hearing within a reasonable time after issuance of the notice, at which time the~~
19 ~~superintendent and the regulated institution shall have the opportunity to present evidence as to~~
20 ~~whether the regulated institution's right to do business should or should not be suspended. After~~
21 ~~the hearing, if it appears to the board of bank incorporation that the regulated institution is in an~~
22 ~~insolvent condition, or is violating its agreement to form or any law or regulation under this title,~~
23 ~~or that it is conducting its business in an unsafe, unauthorized, deceptive, or dishonest manner,~~
24 ~~the board of bank incorporation may give notice to the regulated institution that it is no longer~~
25 ~~authorized to do business. Any of these regulated institutions not in an insolvent condition may be~~
26 ~~reauthorized by the board of bank incorporation to resume its business upon complying with the~~
27 ~~terms and conditions set forth by the board of bank incorporation pursuant to the laws or~~
28 ~~regulations under this title. Any regulated institution aggrieved by an order of the board of bank~~
29 ~~incorporation may appeal that order to the superior court pursuant to chapter 35 of title 42.~~

30 SECTION 5. This act shall take effect upon passage.

=====
LC01384
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS

- 1 This act would eliminate the board of bank incorporation.
- 2 This act would take effect upon passage.

=====
LC01384
=====