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## Financial Institutions & Insurance Committee

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### HB 2831

**Brief Description:** Regulating state-chartered commercial banks, trust companies, savings banks, and their holding companies.

**Sponsors:** Representatives Simpson, Bailey, Kirby, Kelley, Chase, Wallace, Rodne and Nelson; by request of Department of Financial Institutions.

#### Brief Summary of Bill

- Extends much of the enforcement authority of the Department of Financial Institutions (Department) over commercial banks, trust companies, and savings banks to their holding companies.
- Makes changes to the laws regulating commercial banks, trust companies, and savings banks.

**Hearing Date:** 1/21/10

**Staff:** Alison Hellberg (786-7152).

#### Background:

The Department of Financial Institutions (Department) charters, examines, and regulates commercial banks, trust companies, and savings banks.

When a bank, trust company, or savings bank is determined to be engaged in, or is planning or attempting to engage in, unsafe or unsound practices, the Department may issue and serve a notice of charges. When the Department determines that continuation of the acts cited in the notice of charges is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company or to otherwise seriously prejudice the interests of its depositors, the Department may issue a temporary cease and desist order.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Department has the authority to remove a director, officer, or employee from office to prohibit his or her participation in the affairs of a bank, trust company, or savings bank. It is a gross misdemeanor to violate an order of a removal. The Department may also disallow loans by a bank, trust company, or savings bank to its directors on account of unsafe and unsound practices.

It is prohibited for any person to make false entries into the books of a bank, trust company, or savings bank or for the removal, destruction, or concealment of records. Directors and employees of banks, trust companies, and savings banks who have been convicted of violating banking laws may not engage in or become an officer or official of any bank, trust company, or savings bank. Directors can be liable if they knowingly violate, or knowingly permit any officers or agents from violating, any banking laws.

In certain situations, the Department may take possession of a bank, trust company, or savings bank. Prior to taking possession, notice must be given to the bank, trust company, or savings bank. If it appears to the Department that any offense or delinquency renders a bank, trust company, or savings bank in an unsound or unsafe condition to continue its business, has capital that is too reduced, has suspended payments of its obligations, or is insolvent, the Department may take possession without notice. Transfers of property or assets by a bank, trust company, or savings bank because of insolvency are void if the transfers show a preference of one creditor over another or if the transfers prevent an equal distribution among creditors.

If it appears to the Department that a bank or trust company is in an unsafe condition, appears to have exceeded its powers, has failed to comply with the law, or gives its consent, then the Department may place the bank or trust company under supervisory authority, and it must comply with the Department's requirements. If the bank or trust company fails to comply with the Department's requirements, the Department may appoint a conservator.

### **Summary of Bill:**

Numerous changes are made to the provisions regulating state-chartered commercial banks, trust companies, savings banks, and many provisions are extended to their holding companies.

#### Extension of Provisions to Holding Companies.

Much of the Department's enforcement authority over banks, trust companies, and savings banks is extended to their holding companies. This includes the authority to:

- adopt rules governing holding company examination and enforcement;
- issue and enforce of cease and desist orders;
- remove directors, officers, or employees if necessary for the protection of the financial institution, or the interests of the depositors or trust beneficiaries;
- disallow loans to directors on account of unsafe and unsound practices;
- make liable for false entries into a book, and for the removal, destruction, or concealment of records;
- prohibit those who have been convicted of certain banking laws from participation in the affairs of a financial institution or its holding company; and
- make directors liable for permitting employees to violate any of the banking laws.

In addition to the existing grounds for issuing a cease and desist order, the Department may issue one in cases where a bank, trust company, or savings bank is less than adequately capitalized. Some definitions are added to the provisions regulating banks, trust companies, and savings banks. The definitions of "adequately capitalized," "critically undercapitalized," "significantly undercapitalized," "undercapitalized," and "well-capitalized," are consistent with the definitions in the prompt corrective action provisions of the Federal Deposit Insurance Act.

Definitions are also provided for holding companies. A "holding company" means a bank holding company or financial holding company of a bank organized under state law or converted to a state bank, or a holding company of a trust company authorized to do business under this title.

#### Insolvency and Liquidation.

The standards for giving official notice of unsafe condition to banks, trust companies, and savings banks are clarified. In addition to other situations, the Department may take possession without prior notice when the bank, trust company, or savings bank is critically undercapitalized with no reasonably foreseeable prospect of recovery. Like with banks and trust companies, with the consent of the director, a savings bank may voluntarily surrender itself to the Department's possession. A notice of the voluntary surrender must be posted on the door of the bank.

The supervisory direction and conservatorship standards that exist for banks and trust companies are extended to savings banks.

#### Penalties.

Banks, trust companies, savings banks, their holding companies, and their directors, officers, employees, and agents, must comply with:

- provisions regulating banks and investment of trust funds;
- directions or orders of the Department;
- supervisory agreements with the Department; and
- applicable statutes, rules and regulations administered by the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation.

Violations of these provisions may subject the offender to a penalty of up to \$10,000 for each offense.

#### Other Provisions.

Some clarifications are made to who may use the terms, "bank," "banker," "bancorp," "bancorporation," and "trust."

Enforcement actions, including supervisory agreements, directions, consent orders, final orders, or other information related to regulatory enforcement actions are exempt from public disclosure.

Many technical, clarifying, and modernizing changes are also made.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.