

HOUSE BILL REPORT

EHB 2831

As Passed House:
February 15, 2010

Title: An act relating to state-chartered commercial banks, trust companies, savings banks, and their holding companies.

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 History:

Committee Activity:

Financial Institutions & Insurance: 1/21/10, 1/26/10 [DP].

Floor Activity:

Passed House: 2/15/10, 98-0.

Brief Summary of Engrossed Bill

- Extends some enforcement authority of the Department of Financial Institutions over commercial banks, trust companies, and savings banks to their holding companies.
- Modifies provisions regulating commercial banks, trust companies, and savings banks.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 9 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Santos and Simpson.

Staff: Alison Hellberg (786-7152).

Background:

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 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.

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 Engrossed 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.

Some 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 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.

Insolvency and Liquidation.

The standards for giving official notice of unsafe conditions 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."

It is clarified that, in addition to examination reports, the Department may share work papers, supervisory agreements or directives, orders, or other information obtained in the conduct of an examination or investigation may be shared with other regulators.

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.

Staff Summary of Public Testimony:

(In support) It is important that people are reasonably assured of the state's financial institutions' health and safety. There has been significant turmoil in the state's financial situation. While Washington's financial institutions did not originate the problematic assets that precipitated the economic downturn, they have been affected by it. This bill contains multiple changes, but most of it is technical in nature. These are strong laws, but they have not been updated since the 1991 changes to the Federal Deposit Insurance Act. In fact, some of the information language in the statute has not been updated since the 1930s and 1950s. The Department worked closely with stakeholders on these changes, and this bill is supported by the industry. This bill brings clarity and transparency to the enforcement authority of the Department and will allow the Department to more effectively regulate state-chartered banks.

The bill gives the Department improved enforcement authority over holding companies. These holding companies have grown in importance over the past several years. Many state-chartered institutions have out-of-state holding companies, and these holding companies can sometimes impact the soundness of state banks.

The bill also improves and clarifies enforcement authority for banks that are less than well-capitalized. It provides more specific capitalization standards. The bill updates definitions and terms that put it into conformance with federal requirements. It improves processes for closing banks. Unfortunately, the Department has had to close banks and expects to close more in 2010. Standards need to be clear for banks and somewhat in conformance with federal counterparts, so the Department can work with them and not in opposition to each other.

These changes to disclosure requirements reflect long-standing practices and address United States Securities and Exchange Commission (SEC) reporting obligations that face banks. In the past there has been concern that they are violating state law by releasing certain information to the SEC. This bill clarifies what is not disclosed by addressing all of the elements of the Department's enforcement activities.

(With concerns) The economic issues of the past few years and the economic situation of financial institutions are important to citizens and the media. While it is proper to keep the examination information confidential, the consent orders and temporary orders should not be exempt from disclosure. Citizens have a right to know if a bank is in trouble or being run by the Department. Financial institutions have not been going down because information has been public. They have been going down because of larger issues in the economy.

It is also common for people to move between jobs in the regulatory agency and industry. People have a right to know about this and the records should be open to see this.

(Opposed) None.

Persons Testifying: (In support) Representative Simpson, prime sponsor; and Brad Williamson, Department of Financial Institutions.

(With concerns) Rowland Thompson, Allied Daily Newspapers and Washington Newspaper Publishers.

Persons Signed In To Testify But Not Testifying: None.