House Engrossed Senate Bill

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
First Regular Session
2015

CHAPTER 165

SENATE BILL 1338

AN ACT

AMENDING SECTIONS 6-126, 6-401, 6-402, 6-412, 6-423 AND 6-465, ARIZONA REVISED STATUTES; RELATING TO FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 6-126, Arizona Revised Statutes, is amended to read:

6-126. Application fees for financial institutions and enterprises

A. The following nonrefundable fees are payable to the department with the filing of the following applications:

1. To apply for a banking permit, ten thousand dollars.

2. To apply for an amendment to a banking or savings and loan association permit, one thousand dollars.

3. To establish each banking branch office, one thousand five hundred dollars.

4. To move a banking office to other than an established office of a bank, one thousand dollars.

5. To apply for a savings and loan association permit, ~~ten~~ FIVE thousand dollars.

6. To establish each savings and loan association branch office, one thousand five hundred dollars.

7. To move an office of a savings and loan association to other than an established office, one thousand dollars.

8. To organize and establish a credit union, one hundred dollars.

9. To establish each credit union branch or to move a credit union office to other than an established office of a credit union, two hundred fifty dollars.

10. To organize and establish any other financial institutions for which an application or investigation fee is not otherwise provided by law, two thousand five hundred dollars.

11. To acquire control of a financial institution, other than a consumer lender, five thousand dollars.

12. To apply for a trust company license, five thousand dollars.

13. To apply for a commercial mortgage banker, mortgage banker, escrow agent or consumer lender license, one thousand five hundred dollars.

14. To apply for a mortgage broker, commercial mortgage broker, sales finance company or debt management company license, eight hundred dollars.

15. To apply for a collection agency license, one thousand five hundred dollars.

16. To apply for a deferred presentment company license, one thousand dollars.

17. To apply for a motor vehicle dealer license, three hundred dollars.

18. To apply for a branch office of an escrow agent, consumer lender, commercial mortgage banker, mortgage banker, trust company, money transmitter, collection agency or deferred presentment company, five hundred dollars.

19. To apply for a branch office of a mortgage broker, commercial mortgage broker, debt management company or sales finance company, two hundred fifty dollars.

20. To apply for approval of the articles of incorporation of a business development corporation, five hundred dollars.

21. To apply for approval for the merger or consolidation of two or more financial institutions, five thousand dollars per institution.

22. To apply for approval to convert from a national bank or federal savings and loan charter to a state chartered institution, five thousand dollars.

23. To apply for approval to convert from a federal credit union to a state chartered credit union, one thousand dollars.

24. To apply for approval to merge or consolidate two or more credit unions, five hundred dollars per credit union.

25. To move an established office of an enterprise to other than an established office, fifty dollars.

26. To issue a duplicate or replace a lost enterprise's license, one hundred dollars.

27. To change a responsible person on a mortgage broker's, commercial mortgage broker's, commercial mortgage banker's or a mortgage banker's license, two hundred fifty dollars.

28. To change an active manager on a collection agency license or a manager of a money transmitter branch office license, two hundred fifty dollars.

29. To change the licensee name on a financial institution or enterprise license, not more than two hundred fifty dollars.

30. To apply for a money transmitter license, one thousand five hundred dollars plus twenty-five dollars for each branch office and authorized delegate to a maximum of four thousand five hundred dollars.

31. To acquire control of any money transmitter or controlling person pursuant to chapter 12 of this title, two thousand five hundred dollars.

32. To receive the following publications:

(a) Quarterly bank and savings and loan statement of condition, not more than ten dollars per copy.

(b) Monthly summary of actions report, not more than five dollars per copy.

(c) A list of licensees, a monthly pending actions report and all other in-house prepared reports or listings made available to the public, not more than one dollar per page.

33. To apply for a loan originator license, an amount to be determined by the superintendent.

34. To apply for a loan originator license transfer, an amount to be determined by the superintendent.

35. To apply for a conversion from a mortgage banker license to a mortgage broker license, an amount to be determined by the superintendent.

B. On issuance of a license or permit for a financial institution or enterprise, the superintendent shall collect the first year's annual assessment or renewal fee for the financial institution or enterprise prorated according to the number of quarters remaining until the date of the next annual assessment or renewal.

C. The following annual renewal fees shall be paid each year:

1. For an escrow agent, or trust company, one thousand dollars plus two hundred fifty dollars for each branch office.

2. For a debt management company or sales finance company, five hundred dollars plus two hundred dollars for each branch office.

3. For a collection agency, six hundred dollars plus two hundred dollars for each branch office.

4. For a motor vehicle dealer, one hundred fifty dollars.

5. For an inactive mortgage broker or commercial mortgage broker, two hundred fifty dollars.

6. For a mortgage banker that negotiates or closes in the aggregate one hundred loans or less in the immediately preceding calendar year, seven hundred fifty dollars, and for a mortgage banker that negotiates or closes in the aggregate over one hundred loans in the immediately preceding calendar year, one thousand two hundred fifty dollars. In addition, a mortgage banker shall pay two hundred fifty dollars for each branch office.

7. For a commercial mortgage banker, one thousand two hundred fifty dollars. In addition, a commercial mortgage banker shall pay two hundred fifty dollars for each branch office.

8. For a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate fifty loans or less in the immediately preceding calendar year, two hundred fifty dollars and for a mortgage broker or commercial mortgage broker that negotiates or closes in the aggregate more than fifty loans in the immediately preceding calendar year, five hundred dollars. In addition, a mortgage broker or commercial mortgage broker shall pay two hundred dollars for each branch office.

9. For a consumer lender, one thousand dollars plus two hundred dollars for each branch office.

10. For a money transmitter, five hundred dollars plus twenty-five dollars for each branch office and each authorized delegate to a maximum of two thousand five hundred dollars.

11. For a deferred presentment company, four hundred dollars. In addition, a deferred presentment company shall pay two hundred dollars for each branch office.

12. For a loan originator, an amount to be determined by the superintendent.

13. For an inactive status loan originator, an amount to be determined by the superintendent.

D. The license, renewal or branch office permit fee for a premium finance company for each calendar year or part thereof shall not be less than one hundred dollars or more than three hundred dollars as set by the superintendent. If the license is issued or the branch office is opened after June 30 in any year, the fees shall not be less than fifty dollars or more than one hundred fifty dollars for that year.

Sec. 2. Section 6-401, Arizona Revised Statutes, is amended to read:

6-401. Definitions

In this chapter, unless the context otherwise requires:

1. "Account" means withdrawable capital deposited with or invested in an association in accordance with any plan authorized by the provisions of this chapter unless such term is otherwise designated or qualified.

2. "Aggregate withdrawal value" means the sum of all payments made on all accounts of the association, all dividends and bonuses credited or allocated to such accounts and all dividends credited to "divided profits" for subsequent crediting to accounts upon maturity, less all withdrawals, retirements and other proper deductions from accounts and all unpaid charges on the accounts.

3. "Association" means every association to which this chapter applies as defined in the section concerning scope of chapter.

4. "Community" means a city, incorporated town, unincorporated town, community or village.

5. "Continuing association" means the association which continues to exist after a merger of associations has been effected.

6. "Federal association" means a savings and loan association or savings association operating under the laws and regulations of the United States.

7. "Impaired" or "impairment", with respect to capital, means a condition in which the value of the association's assets is less than the aggregate amount of the association's liabilities to creditors, the aggregate value of its accounts and the aggregate par value of its guaranty capital.

8. "Improved real estate" means real estate which is, or which from the proceeds of the loan will become, a home, combination of home and business property or other improved real estate.

9. "Insurance corporation" means the federal deposit insurance corporation or such other instrumentality of, or corporation chartered by, the United States as may be established for the purpose of insuring the accounts of savings and loan associations OR ANY OTHER EQUIVALENT DEPOSIT INSURER APPROVED BY THE SUPERINTENDENT.

10. "Insured association" means an association, the accounts of which are insured wholly or in part by an insurance corporation.

11. "Investment" means to put funds to use in order to secure profits.

12. "Mail" or "mailed" means, with respect to a writing or notice, deposit in a United States post-office mailing facility in this state with postage prepaid and correctly addressed to the proper person at his address

stated on the association's records or otherwise agreed upon or if no address has been so established then to the last known address.

13. "Merger" includes consolidation.

14. "Merging association" means an association which plans or effects a merger with one or more other associations in accordance with the provisions of this chapter concerning merger.

15. "Other improved real estate" means real estate other than a home or combination home and business property which, because of its state of improvement, or improvement from the proceeds of the loan, will produce sufficient income to maintain the property and retire the loan in accordance with the terms of the loan.

16. "Participating interests" means the purchase or acquisition of an interest in an existing permanent mortgage loan.

17. "Prior act" means any statute of this state which, ~~prior to the effective date of this chapter~~ BEFORE JUNE 25, 1960, has governed the formation or operation of associations of the type described in the section of this chapter concerning scope of the chapter.

18. "Profits" means, as determined by the application of proper accounting principles, gross income less the aggregate of operating and other expenses, losses actually sustained and not charged to reserves under the provisions of this chapter and interest paid or accrued on borrowings and non-recurring charges.

19. "Publication", "publish" or "published" means printed in the English language in a newspaper of general circulation published in the community in which the association's business office is located or if no such newspaper exists in said community then in the county in which such business office is located. Unless otherwise specified in this chapter publication shall be made once each week for two successive weeks.

20. "Total assets" means the total value of all loan contracts without deduction for the withdrawal value of any accounts of the association held as collateral for loans and the total value of all other assets of the association as determined by the application of proper accounting principles.

21. "Withdrawal value" of an account means the sum of all payments made by the holder on the account and all dividends and bonuses credited or allocated to such account less all withdrawals, retirements and other proper deductions from the account and all unpaid charges on the account.

Sec. 3. Section 6-402, Arizona Revised Statutes, is amended to read:

6-402. <u>Scope of chapter; application to federal associations and federal savings banks</u>

A. This chapter applies to all existing savings and loan associations, and other similar associations and savings banks by whatever name called, organized under this or any prior act.

B. Every federal savings and loan association and federal savings bank shall have all the rights, powers and privileges and shall be entitled to the same exemptions and immunities as savings and loan associations organized

under the laws of this state unless prohibited by federal law. In addition to all other rights, powers and privileges, savings and loan associations organized under the laws of the state, whose accounts are insured by an ~~instrumentality of the United States~~ INSURANCE CORPORATION, shall have all the rights, powers and privileges and shall be entitled to the same exemptions and immunities as federal savings and loan associations doing business in this state unless prohibited by this chapter.

Sec. 4. Section 6-412, Arizona Revised Statutes, is amended to read:

6-412. Completion of organization

A. When the board of directors has organized as provided in this chapter and the report of such organization has been filed with the superintendent, he shall make a thorough examination into the affairs of the proposed association, and if he approves the articles of incorporation and is satisfied that all the requirements of this chapter have been complied with, and that no intervening circumstance has occurred to change the superintendent's findings made pursuant to this chapter, upon payment into the superintendent's office of the fees for such examination, he shall issue a certificate authorizing the filing of the articles of incorporation with the corporation commission and the taking of the other steps required by title 10, to complete the formation of a corporation. Upon the appointment of a statutory agent and the issuance of a certificate of incorporation by the corporation commission and the payment into escrow with a responsible corporate escrow agent approved by the superintendent of the amount of the initial capital required by this chapter, the superintendent shall issue a permit conditioned upon the association securing within twelve months from the date of such permit insurance of its insurable accounts by ~~the federal deposit insurance corporation, or any successor instrumentality, pursuant to the laws of the United States~~ AN INSURANCE CORPORATION and the rules and regulations of such corporation.

B. Unless such insurance is secured within such period the permit shall be deemed revoked unless the superintendent, upon good cause shown, shall extend the time for securing such insurance for a single fixed period which shall not exceed six months. The association shall not operate as a savings and loan association under the laws of this state or transact any other business than that necessary to secure such insurance until it has secured such insurance. If such insurance is not secured within the time provided by this chapter or as extended by the superintendent, all amounts collected as subscriptions to the required capital shall be returned to the subscribers without reduction.

~~C. All existing associations doing business under this chapter shall, within one year from the effective date of this chapter, submit to the superintendent evidence of their having insurance of accounts with an instrumentality of the United States; provided, however, that if an existing association has filed a bona fide application for such insurance after the effective date of this chapter and diligently pursues its application, and~~

~~additional time is required for the granting of such insurance, the superintendent may extend said one-year period for not to exceed an additional six months.~~

Sec. 5. Section 6-423, Arizona Revised Statutes, is amended to read:

6-423. Accounts

A. An association may maintain all types of deposit accounts and prescribe those terms and conditions relating to the accounts as are permissible for the association to maintain the insurance of its deposits by ~~the federal deposit~~ AN insurance corporation.

B. Accounts are:

1. Withdrawable and subject to enforced retirement as provided in this article. This chapter does not prevent the withdrawal of funds from an association by negotiable or nonnegotiable order.

2. Entitled to dividends as provided in this article.

3. Nonassessable for either debts or losses of the association.

4. Issued on such plan or plans of payment and in such series or classes as the bylaws may provide, which plan or plans of payment may include:

(a) Regular installment plan with agreed weekly or monthly payments, with dividends credited to or in behalf of the account until the ultimate value agreed upon in the subscription is reached.

(b) Full paid plan with one single payment of one hundred dollars per unit and dividends payable in cash unless by agreement credited to the account.

(c) Prepaid plan with one single payment in such amount per unit as is set forth in the bylaws and dividends credited to such account until the ultimate value of one hundred dollars per unit is reached.

(d) Optional plan with payments in such amount or amounts and at such times as the holder may elect and dividends credited to such account unless by agreement payable in cash.

(e) Any other plan of payment which the superintendent may approve as conforming to sound savings and loan practice.

Sec. 6. Section 6-465, Arizona Revised Statutes, is amended to read:

6-465. Merger of associations or corporations

A. An association operating under this chapter may merge into or with one or more associations, whether operating under this chapter or otherwise, or into or with any other corporation, except a corporation or association operating an insurance business, other than title insurance, pursuant to title 20. The board of directors of each merging association or corporation, by resolution adopted by a majority vote of all members of such board, must approve the plan of merger, which shall set forth:

1. The name of each merging association or corporation, and the name of the continuing association or corporation and the location of its principal office.

2. The amount of capital, reserves, and undivided profits of the continuing association or corporation, and the kinds of shares and other types of capital to be issued thereby.

3. The articles of incorporation of the continuing association or corporation.

4. A detailed pro forma financial statement of the assets and liabilities of the continuing association or corporation.

5. The manner and basis of converting the capital of each merging association or corporation into capital of the continuing association or corporation.

6. The other terms and conditions of the merger and the method of effectuating the same.

7. Such other provisions with respect to the merger as appear necessary or desirable, or as the superintendent may reasonably require to enable him to discharge his duties with respect to such merger.

B. The plan of merger adopted shall be submitted to the superintendent for approval, together with a certified copy of the authorizing resolution of each board of directors, showing approval by a majority of the entire board of each merging association operating under this chapter and evidence of proper action by the board of any other merging association or corporation. The superintendent may make or cause to be made an examination of the affairs of each of the merging associations or corporations. The superintendent may approve the plan of merger if, after appropriate inquiry into the affairs of each of the merging associations or corporations, he finds that:

1. If the resulting association or corporation is an association operating under this chapter, the continuing association meets the requirements of this chapter as to the organization of a new association ~~including insurance of accounts as required by section 6-412, subsection C~~.

2. The plan provides an adequate capital structure.

3. The plan is fair to all persons affected.

4. The plan meets the approval of the insurance corporation, if such approval is required.

C. If the superintendent disapproves the plan of merger, he shall state his objections in writing and give the merging associations or corporations an opportunity to amend the plan of merger to eliminate such objections.

D. Except as provided by subsection F of this section, after approval by the superintendent, the plan of merger shall be submitted to a vote of the members of each merging association operating under this chapter and to the members or stockholders of any other merging association or corporation to the extent required by the laws and rules applicable to the other merging association or corporation. Each meeting of the members of an association operating under this chapter shall be called and held in accordance with section 6-415. The plan shall be approved by the members of an association

operating under this chapter if the plan receives, in the affirmative, a majority of the total number of votes which all members of the association are entitled to cast or such greater percentage of the votes as the articles of incorporation of the association require. Each meeting of any other association or corporation shall be called and held, and the required majority must be obtained, in accordance with the law and regulations applicable to such association or corporation.

E. A report of proceedings at the meeting of the members or stockholders of each association or corporation, certified by the president or a vice-president and attested by the secretary thereof, and setting forth the notice given and time of mailing thereof, the vote on the plan of merger, and the total number of votes which all members or stockholders of the association or corporation were entitled to cast thereon, shall be filed in duplicate with the superintendent, except that if no member or stockholder vote is required by an association or corporation, the association or corporation shall file a report to that effect, in duplicate, certified by the president or vice-president and attested by the secretary of the association or corporation. Any report filed under this subsection shall be accompanied by the plan of merger, duly executed by each merging association or corporation. The superintendent thereupon shall issue to the continuing association or corporation a certificate of merger, setting forth the name of each merging association or corporation and the name of the continuing association or corporation, and the articles of incorporation of the continuing association or corporation.

F. Unless required by its articles of incorporation, a vote of the members of the continuing association or corporation is not necessary to authorize a merger if either:

1. No shares of common stock are to be issued by the continuing association or corporation and no shares, securities or obligations convertible into such stock are to be issued or delivered under the plan of merger.

2. The authorized but unissued shares or the treasury shares of common stock of the continuing association or corporation to be issued or delivered under the plan of merger plus those initially issuable on conversion of any other shares, securities and obligations to be issued or delivered under the plan do not exceed twenty per cent of the shares of common stock of the association or corporation outstanding immediately before the effective date of the merger. If a plan of merger is adopted pursuant to this subsection, a statement that the plan has been so adopted and that, as of the date of the statement, the outstanding shares of the continuing association or corporation were such as to render this subsection applicable shall be certified by the president or vice-president and attested by the secretary and shall be attached to the plan of merger. The plan so approved and the statement described in this subsection shall be filed in duplicate with the superintendent.

G. The merger shall become effective upon the filing with the corporation commission of the certificate of merger in the same manner as articles of incorporation, and the recording of a copy thereof certified by the corporation commission in each county in this state in which the business office of any of the merging associations or corporations was located, and in the county in which the business office of the continuing association or corporation is located, if any.

H. The expenses of any examination made by or at the direction of the superintendent in connection with a proposed merger shall be paid by the merging association or corporation in accordance with the fees fixed for special examination by section 6-125.

I. If the continuing association or corporation is to be governed by the laws of any jurisdiction other than this state, it shall comply with the applicable provisions of the laws under which it is organized and shall comply with the laws of this state with respect to foreign corporations if it is to transact business in this state.

APPROVED BY THE GOVERNOR APRIL 1, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 2, 2015.

Passed the House March 23, 20 15,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 19, 20 15,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Susan Asebas
Assistant

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1338

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 25, **20** 15

by the following vote: 28 **Ayes,**

0 **Nays,** 2 **Not Voting**

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

26th **day of** March, **20** 15

at 8:47 **o'clock** P. **M.**

Secretary to the Governor

Approved this 1st **day of**

April

at 2:54 **o'clock** P. **M.**

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2 **day of** April, **20** 15

at 9:00 **o'clock** A **M.**

Secretary of State

S.B. 1338