

CHAPTER NO. 54

SENATE BILL NO. 1656

By Elsea, Atchley

Substituted for: House Bill No. 1379

By Ford, Boyer

AN ACT To amend Tennessee Code Annotated, Title 45, Chapters 1 and 2 and Section 45-14-114, relative to the regulation of banks and savings banks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-1-107(c), is amended by adding the words "opportunity for a" between the current words "and" and "hearing" in the first sentence.

SECTION 2. Tennessee Code Annotated, Section 45-1-107(h), is amended by deleting the language in its entirety and substituting the following instead:

(h) The commissioner is hereby granted the power to enact reasonable substantive and procedural rules to carry out the purposes of any and all chapters within the commissioner's regulatory authority as conferred by law. This power shall specifically include, but not be limited to, the authority to establish a schedule of fees to be charged by the department relative to notifications or applications to be reviewed by the department. Such promulgation shall be done in conformity with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 3. Tennessee Code Annotated, Section 45-1-117, is amended by adding the following language as a new subsection (e):

(e) Notwithstanding the above, the commissioner shall have the authority by rule or by policy to determine what situations are material to the maintenance of regulatory independence and shall establish appropriate exceptions for those situations subject to this section where, by actions beyond the employee's control, there is no intent by the employee to circumvent this section. In so doing, the commissioner shall establish the circumstances under which covered department employees must be recused from official duties and shall have the authority to define the terms of this section. In establishing these standards, the commissioner shall consider the ethical standards established by other state or federal regulators. Nothing in this subsection shall apply to the requirements otherwise imposed on the commissioner.

SECTION 4. Tennessee Code Annotated, Section 45-2-101, is amended by deleting the section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 45-2-202(a), is amended by adding the following language as a new subdivision, by deleting the word "and" after item (4), by deleting the period (.) after the word "located" in item (5) and by inserting the word and punctuation "; and" after the word "located" in item (5):

(6) The proposed name of the institution which, in the commissioner's judgment, is not likely to cause confusion to the affected public. The incorporators shall use the phrase "in organization" after the proposed bank's name until such time as the certificate of authority has been issued.

SECTION 6. Tennessee Code Annotated, Section 45-2-205(b)(6), is amended by deleting the subdivision in its entirety and by renumbering the remaining subdivisions accordingly.

SECTION 7. Tennessee Code Annotated, Section 45-2-206, is amended by inserting a period (.) after the word "subscribers", deleting the remaining language and by adding a new second sentence as follows:

The incorporators or directors, as appropriate, may not remove any funds from the escrow account prior to the issuance of the certificate of authority unless they receive written approval from the commissioner.

SECTION 8. Tennessee Code Annotated, Section 45-2-207, is amended by inserting a period(.) after the word "adequate" in subsection (a), and by deleting the remaining language of subsection (a) except for (a)(4), all of which is to be designated as subsection (a).

SECTION 9. Tennessee Code Annotated, Section 45-2-207, is further amended by deleting subsection (b) in its entirety and by designating the succeeding subsections accordingly.

SECTION 10. Tennessee Code Annotated, Section 45-2-218(b), is amended by inserting the language "except as provided by Tennessee Code Annotated, Section 48-20-102(1)-(7)", between the current word "stockholders" and the period (.).

SECTION 11. Tennessee Code Annotated, Section 45-2-401(e), is amended by deleting the second sentence in its entirety and by substituting the following as a new second sentence:

The bank shall have only one officer designated as president and the president shall be a member of the board of directors.

SECTION 12. Tennessee Code Annotated, Section 45-2-402(c), is amended by deleting the language of the subsection in its entirety and by substituting instead the following language:

The board shall cause a review, at least once in each calendar year at intervals of not more than 15 months, of all the affairs of the state bank, including the character and value of investments, loans, the efficiency of operating procedures and such other matters as the commissioner may prescribe, with such review discussed and recorded in the minutes. Compliance with the external auditing requirements of the federal regulatory agencies shall be deemed as compliance with this subsection. However, the commissioner may require, at his discretion, any state bank to obtain a financial statement audit or balance sheet audit should conditions warrant such.

SECTION 13. Tennessee Code Annotated, Section 45-2-404, is amended by deleting the language in its entirety and by substituting instead the following language:

The board of directors of a state bank may not declare dividends in any calendar year that exceeds the total of its net income of that year combined with its retained net income of the preceding two years without the prior approval of the commissioner.

SECTION 14. Tennessee Code Annotated, Section 45-2-614(b), is amended by deleting the second and third sentences of the subsection and substituting instead the following language:

Notwithstanding the above, the commissioner shall provide by regulation that a bank with a regulatory rating of 1 or 2 may, in lieu of an application, file a written notification for a branch office with the commissioner providing such information as the commissioner may require, including but not limited to, proof of public notice. Unless objected to by the commissioner with a request for additional information, the notice shall be deemed sufficient and approved at the expiration of the public notice comment period as established by regulation.

SECTION 15. Tennessee Code Annotated, Section 45-2-614(b), is further amended by deleting the current fifth sentence in its entirety and substituting instead the following language:

In the event the notification or application to open a branch bank is disapproved and the bank feels aggrieved, the bank may petition for a review by certiorari as provided in Title 27, Chapter 9.

SECTION 16. Tennessee Code Annotated, Section 45-2-619, is amended by deleting subdivision (1)(B) in its entirety and by substituting instead the following language:

(B) Which:

(1) is domiciled in Tennessee;  
(2) has a branch lawfully doing business in Tennessee pursuant to the provisions of this part;

(3) is a federally chartered institution described in (1)(A) (i) through (v); or

(4) is a state chartered institution described in (1)(A) (i) through (v), provided the home state of such institution does not prevent or limit a Tennessee chartered institution's ability to own or operate similar devices in such home state. If the home state has any such restrictions then out-of-state institutions from such home state may own or operate to the same extent and under the same terms and conditions that would apply to a Tennessee institution in the home state.

SECTION 17. Tennessee Code Annotated, Section 45-2-1102(c)(2)(A), is amended by deleting the word "department" and by inserting the words "state or federal" between the words "recent" and "report".

SECTION 18. Tennessee Code Annotated, Section 45-2-1102(c)(2)(B), is amended by deleting the words and punctuation in the subdivision between the words "means" and

“industrial” and by substituting instead the words and punctuation “ a bank, savings bank, savings and loan association or any subsidiary of such entities;”.

SECTION 19. Tennessee Code Annotated, Section 45-2-1103, is amended by deleting the section in its entirety and substituting the following:

45-2-1103. Loans to officers and directors. Compliance with the requirements of 12 U.S.C. 375 a, 12 U.S.C. 375 b, and 12 U.S.C. 1828(j) and applicable federal regulations shall be deemed compliance with the laws of Tennessee concerning loans to directors and officers of state banks.

SECTION 20. Tennessee Code Annotated, Section 45-2-1104, is amended by designating the current subsection (b) as (b)(1) and designating the current subsection (c) as (b)(2).

SECTION 21. Tennessee Code Annotated, Section 45-2-1302(c), is amended by deleting the last sentence of the subsection.

SECTION 22. Tennessee Code Annotated, Section 45-2-1303(c), is amended by deleting the last sentence of the subsection and substituting instead the following sentence:

The resulting state bank may create and operate branch banks in accordance with Section 45-2-614.

SECTION 23. Tennessee Code Annotated, Section 45-2-1312, is amended by deleting the section in its entirety and by designating subsequent sections accordingly.

SECTION 24. Tennessee Code Annotated, Section 45-2-1402(1), is amended by deleting the words “in operation for at least five (5) years” and substituting instead the words “open and engaged in the business of banking for at least five (5) continuous years”.

SECTION 25. Tennessee Code Annotated, Section 45-2-1603(a)(8), is amended by deleting the language and punctuation in its entirety after the current word and punctuation “institutions;”.

SECTION 26. Tennessee Code Annotated, Section 45-2-1603(a)(11), is amended by deleting the words “federal home loan bank board and the federal deposit insurance corporation” and substituting instead the words and punctuation “office of thrift supervision, federal trade commission, United States department of labor and the securities and exchange commission” between the words and punctuation “the” and “,or”.

SECTION 27. Tennessee Code Annotated, Section 45-2-1603(a)(12), is amended by deleting the words “securities division of the”.

SECTION 28. Tennessee Code Annotated, Section 45-2-1603(c), is amended by inserting the words and punctuation “consultants, bonding company,” between the words “bank’s” and “external”.

SECTION 29. Tennessee Code Annotated, Section 45-2-1603(f), is amended by inserting the word and punctuation “insurance,” between the words “regarding” and “securities” where the word first appears and also between the words “the” and “banking”.

SECTION 30. Tennessee Code Annotated, Section 45-2-1604(b)(1), is amended by deleting the last sentence of that subdivision in its entirety and by substituting instead the following language:

Instead of the report required under this subsection, the commissioner may accept a copy of a call report required by federal regulatory agencies or may deem the filing of the report, electronic or otherwise, as required by federal regulatory agencies to constitute compliance with this section.

SECTION 31. Tennessee Code Annotated, Section 45-2-1809, is amended by deleting the section in its entirety.

SECTION 32. Tennessee Code Annotated, Section 45-14-114, is amended by designating the current language as subsection (a) and adding the following language as a new subsection (b):

(b) Any certificate of authority issued under this chapter shall be null and void if substantially all of the assets of a savings bank are acquired without acquiring the charter.

SECTION 33. Tennessee Code Annotated, Section 45-2-1906(c), is amended by inserting the words and punctuation “: three hundred sixty (360), if the written agreement so provides, or” between the words “divided by” and the words “three hundred and sixty-five (365)”.

SECTION 34. Tennessee Code Annotated, Section 45-2-1903(b), is amended by adding the following at the end of the subdivision:

“Cardholder” also includes borrowers and other primary obligors on loans.

SECTION 35. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

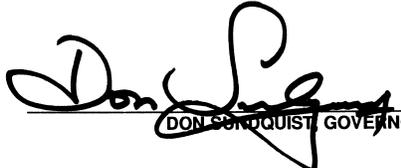
SECTION 36. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 26, 2001

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 4<sup>th</sup> day of April 2001

  
DON SUNDQUIST, GOVERNOR