

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

SENATE BILL 1450

AN ACT

AMENDING SECTIONS 6-101, 6-184, 6-204, 6-231, 6-245, 6-273, 6-322, 6-384, 6-395, 6-395.06, 6-395.07 AND 6-395.09, ARIZONA REVISED STATUTES; RELATING TO FINANCIAL INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 6-101, Arizona Revised Statutes, is amended to
3 read:

4 6-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Automated teller machine" means an automated device that is
7 established by a bank, savings and loan association or credit union and that
8 facilitates customer-bank communications activities, including taking
9 deposits and disbursing cash drawn against a customer's deposit account or a
10 customer's preapproved loan account, at a location separate from the home
11 office or a branch.

12 2. "Bank" means a corporation that holds a banking permit issued
13 pursuant to chapter 2 of this title.

14 3. "Banking office" means any place of business of the bank at which
15 deposits are received, checks are paid or money is loaned but does not
16 include the premises used for computer operations, proofing, ~~record-keeping~~
17 **RECORDKEEPING**, accounting, storage, maintenance or other administrative or
18 service functions.

19 4. "Branch" means any banking office other than the principal banking
20 office.

21 5. "Department" means the department of financial institutions.

22 6. "Enterprise" means any person under the jurisdiction of the
23 department other than a financial institution.

24 7. "Federal deposit insurance corporation" includes any successor to
25 the corporation or other agency or instrumentality of the United States ~~which~~
26 **THAT** undertakes to discharge the purposes of the corporation.

27 8. "Financial institution" means banks, trust companies, savings and
28 loan associations, credit unions, consumer lenders, international banking
29 facilities and financial institution holding companies under the jurisdiction
30 of the department.

31 9. "Home state" means the state that has granted the bank its charter,
32 permit or license to operate.

33 10. "Host state" means the state in which a financial institution is
34 doing business and not the state that has granted the bank its charter,
35 permit or license to operate.

36 11. "In-state financial institution" means a state or federal bank,
37 savings bank, savings and loan association or holding company with its home
38 office located in this state.

39 **12. "INSURING ORGANIZATION" MEANS THE FEDERAL DEPOSIT INSURANCE**
40 **CORPORATION, THE NATIONAL CREDIT UNION ADMINISTRATION OR ITS SUCCESSOR OR ANY**
41 **OTHER EQUIVALENT DEPOSIT INSURER APPROVED BY THE SUPERINTENDENT.**

42 ~~12-~~ 13. "International banking facility" means a facility represented
43 by a set of asset and liability accounts segregated on the books and records
44 of a commercial bank, the principal office of which is located in this state,
45 and which is incorporated and doing business under the laws of the United

1 States or of this state, a United States branch or agency of a foreign bank,
2 an edge corporation organized under section 25(a) of the federal reserve act
3 (12 United States Code sections 611 through 631) or an agreement corporation
4 having an agreement or undertaking with the board of governors of the federal
5 reserve system under section 25 of the federal reserve act (12 United States
6 Code sections 601 through 604(a)) that includes only international banking
7 facility time deposits and international banking facility extensions of
8 credit as defined in 12 Code of Federal Regulations part 204.

9 ~~13.~~ 14. "National credit union administration" includes any successor
10 to the organization or other agency or instrumentality of the United States
11 which undertakes to discharge the purposes of the organization.

12 ~~14.~~ 15. "Out-of-state bank" means a bank, savings bank or savings and
13 loan association that is approved by the superintendent pursuant to section
14 6-322 and that has a charter, a permit or any other license to operate that
15 is issued by a state other than this state.

16 ~~15.~~ 16. "Out-of-state financial institution" means a state or federal
17 bank, savings bank, savings and loan association or holding company with its
18 home office in a state other than this state.

19 ~~16.~~ 17. "Superintendent" means the superintendent of financial
20 institutions.

21 ~~17.~~ 18. "Title" includes this title, title 32, chapter 9 and title 44,
22 chapter 2.1.

23 Sec. 2. Section 6-184, Arizona Revised Statutes, is amended to read:

24 ~~6-184.~~ General corporate and banking powers; incidental powers;
25 insurance; federal reserve and home loan bank
26 membership; agency relationship

27 A. A corporation holding a banking permit under this chapter may:

28 1. Except as prohibited by law, exercise the powers derived from its
29 existence as an Arizona corporation.

30 2. Except as prohibited by law, exercise any power and engage in any
31 activity ~~which~~ THAT it could exercise or engage in if it were a national
32 banking association with a banking office in this state.

33 3. Directly or through a bank subsidiary engage in any lawful activity
34 ~~which~~ THAT is reasonably related or incidental to banking. All activities in
35 which any bank was lawfully engaged directly or through a subsidiary on
36 December 31, 1971 are declared to be incidental and related to banking for
37 the purposes of this paragraph.

38 4. Do the acts necessary to obtain and maintain insurance of its
39 deposits by ~~the federal deposit insurance corporation~~ AN INSURING
40 ORGANIZATION.

41 5. Do the acts necessary to acquire and hold membership in the federal
42 reserve system or the federal home loan bank.

43 6. Except as prohibited by law, directly or through a bank subsidiary,
44 make any loan or investment, offer accounts or engage in any business
45 activity authorized for national banking associations, federal savings banks,

1 or state or federally chartered or licensed savings and loan associations
2 doing business in this state. This paragraph is subject to section 33-1571.

3 7. Except as prohibited by law and subject to such rules as the
4 superintendent may adopt, through a bank subsidiary, invest in real estate in
5 the state or interests therein, including corporations, partnerships, and
6 joint ventures ~~which~~ THAT acquire, develop, improve, hold, lease, operate and
7 sell real estate. This paragraph is subject to section 33-1571.

8 B. An in-state financial institution or an out-of-state financial
9 institution may act as an agent of any other in-state financial institution
10 or out-of-state financial institution that is a subsidiary of the same
11 holding company for purposes of conducting the activities authorized by this
12 subsection. This subsection applies regardless of whether the affiliated
13 entities share the same home state. An in-state financial institution or an
14 out-of-state financial institution entering into an agency relationship shall
15 notify the superintendent of that agency relationship at least ten days
16 before the effective date of that agency relationship. Agency relationships
17 among affiliates shall be consistent with safe and sound business practices
18 and shall comply with all applicable laws and rules. An in-state financial
19 institution or an out-of-state financial institution acting as an agent is
20 not deemed to be a branch of the affiliate solely because of activities
21 lawfully conducted pursuant to this subsection. An in-state financial
22 institution or an out-of-state financial institution that is acting as an
23 agent for an affiliated entity may do any of the following:

- 24 1. Receive deposits.
- 25 2. Renew time deposits.
- 26 3. Service loans.
- 27 4. Receive payments on loans and other obligations.
- 28 5. Perform other customary banking services with the prior approval of
29 the superintendent.

30 C. An in-state financial institution or an out-of-state financial
31 institution acting as an agent as prescribed by subsection B of this section
32 on behalf of an affiliated financial institution may not do any of the
33 following:

- 34 1. Open demand, savings or time accounts.
- 35 2. Evaluate or approve loans.
- 36 3. Disburse loan monies.
- 37 4. Conduct any activity as an agent that it is prohibited from
38 conducting as a principal under any applicable law or rule.

39 D. An in-state financial institution or an out-of-state financial
40 institution that is acting as a principal as prescribed by subsection B of
41 this section may not have its affiliated entity act as an agent on its behalf
42 in conducting any of the following:

- 43 1. Any activity that is prohibited to the principal.
- 44 2. Any activity that is prohibited to the agent.

1 Sec. 3. Section 6-204, Arizona Revised Statutes, is amended to read:
2 6-204. Issuance of banking permit; trust business; conditional
3 approval; hearing; banker's bank; definitions

4 A. ~~Upon~~ ON the filing of an application for a banking permit the
5 superintendent shall make or cause to be made an investigation and
6 examination of the facts concerning the applicant. Except as provided in
7 subsection F OF THIS SECTION, the superintendent shall issue the permit if,
8 but only if, ~~he~~ THE SUPERINTENDENT finds:

9 1. The applicant is a corporation organized under the laws of this
10 state having powers and purposes to engage in the banking business.

11 2. The deposits of the bank will be insured by ~~the federal deposit~~
12 ~~insurance corporation~~ AN INSURING ORGANIZATION when the bank commences
13 business.

14 3. The ability and integrity of the persons involved in the
15 organization and management of the proposed bank are such as to demonstrate
16 that it will be operated in a sound and lawful manner.

17 4. The applicant has paid in capital ~~which~~ THAT is adequate for its
18 prospective business.

19 5. The need for the bank in the community or area where the bank will
20 be located is such as to demonstrate the favorable prospect for a sound
21 banking operation.

22 B. An application ~~which~~ THAT is not denied or approved by the
23 superintendent within ninety days after the application is filed with the
24 superintendent is deemed to be approved by the superintendent as of the first
25 day after the period.

26 C. A banking permit may initially or by amendment include the
27 authority of a bank to engage in the trust business.

28 D. The superintendent may approve the application conditioned ~~upon~~ ON
29 specific requirements being met, but a permit shall not be issued unless such
30 conditions have been met within the time specified in the order or any
31 extension.

32 E. The permit may be granted or denied without a hearing, but the
33 superintendent may, and shall at the request of the applicant, fix a date for
34 a hearing on the application. At the hearing any person may be heard with
35 reference to the facts to be investigated.

36 F. The superintendent shall not issue a banking permit pursuant to
37 subsection A OF THIS SECTION for a banker's bank unless all of the following
38 apply:

39 1. The stock of the applicant is owned exclusively by one or more
40 state or nationally chartered banks or, if the stock is owned by a holding
41 company, the holding company's stock is owned exclusively by one or more
42 state or nationally chartered banks.

43 2. The applicant engages in or will engage exclusively in providing
44 banking services to or for other depository institutions or their holding

1 companies and the directors, officers or employees of the depository
2 institutions.

3 3. The applicant offers or will offer correspondent banking services
4 for other depository institutions or their holding companies.

5 4. The applicant is fully insured by ~~the federal deposit insurance~~
6 ~~corporation~~ AN INSURING ORGANIZATION.

7 5. No single entity acquires or retains at any time ownership, control
8 or power to vote more than ten ~~per cent~~ PERCENT of any class of voting
9 securities of the banker's bank.

10 G. For purposes of this section:

11 1. "Banker's bank" means an entity that is owned exclusively by one or
12 more state or nationally chartered banks or bank holding companies and that
13 exclusively provides banking services to or for other depository institutions
14 and their holding companies.

15 2. "Nationally chartered bank" means a bank or savings bank chartered
16 by the office of the comptroller of the currency ~~or the office of thrift~~
17 ~~supervision~~.

18 Sec. 4. Section 6-231, Arizona Revised Statutes, is amended to read:
19 6-231. Deposit accounts

20 A bank may maintain all types of deposit accounts and prescribe such
21 terms and conditions relating to the accounts as are permissible for the bank
22 to maintain the insurance on its deposits by ~~the federal deposit insurance~~
23 ~~corporation~~ AN INSURING ORGANIZATION.

24 Sec. 5. Section 6-245, Arizona Revised Statutes, is amended to read:
25 6-245. Pledge of assets; rediscount; exception to requirement
26 of security

27 A. A bank may pledge, mortgage or otherwise hypothecate its assets:

28 1. To qualify the bank to act as a fiscal agent for any governmental
29 entity.

30 2. To secure deposits ~~which~~ THAT are required by law to be secured.

31 3. To secure borrowings from one business day to the next from another
32 bank.

33 4. To secure borrowings from a federal reserve bank or any federal
34 agency.

35 5. To secure other obligations, exclusive of deposits, provided the
36 aggregate value of the assets as carried on the books of the bank encumbered
37 for purposes other than those specified in paragraphs 1 through 4 of this
38 subsection shall not exceed the capital account of the bank except with the
39 approval of the superintendent.

40 B. ~~The provisions of~~ Subsection A OF THIS SECTION shall not prohibit
41 or limit the sale or rediscount of commercial paper or securities with
42 endorsement, guarantee or agreement to repurchase.

43 C. Whenever by the law of this state a bank is required to provide
44 security for deposits in the form of collateral, surety bond or any other
45 form, such security is not required to the extent such deposits are insured

1 by ~~the federal deposit insurance corporation~~ AN INSURING ORGANIZATION. For
2 the purposes of this subsection, acceptable security for deposits includes:
3 1. Certificates of deposit insured by an agent or instrumentality of
4 the United States.
5 2. Interest bearing savings deposits in banks and savings and loan
6 associations doing business in this state whose accounts are federally
7 insured.
8 3. United States government obligations.
9 4. Municipal bonds and bonds issued by a state, county or school
10 district.
11 5. Obligations for which the payment of principal and interest is
12 guaranteed by the United States or by an agency or instrumentality of the
13 United States.
14 6. Registered warrants if offered as security for monies of the county
15 by which they are issued.
16 7. First mortgages and trust deeds together with the promissory notes
17 or other evidences of indebtedness described in the instruments on improved,
18 otherwise unencumbered real estate located in this state if no single
19 mortgage or trust deed represents more than ten ~~per cent~~ PERCENT of the total
20 collateral security and the promissory note or other evidence of indebtedness
21 secured by the mortgage or trust deed has been in existence for at least
22 three years and no default with respect to the promissory note or other
23 evidence of indebtedness has occurred during its existence.
24 Sec. 6. Section 6-273, Arizona Revised Statutes, is amended to read:
25 6-273. Form of reserves; limitations
26 Legal reserves shall consist of:
27 1. Cash.
28 2. Cash items in the process of collection payable immediately ~~upon~~ ON
29 presentation in the United States.
30 3. Unpledged obligations of the United States maturing not more than
31 six months ~~from~~ AFTER the date such obligation is used for reserve purposes
32 at par.
33 4. Net deposit balances with each reserve depository in this state,
34 exclusive of deposits not payable on demand unless evidenced by a negotiable
35 certificate of deposit maturing not more than six months ~~from~~ AFTER the date
36 the certificate is used for reserve purposes.
37 5. Net deposit balances with each out-of-state reserve depository,
38 exclusive of deposits not payable on demand unless evidenced by a negotiable
39 certificate of deposit maturing not more than six months ~~from~~ AFTER the date
40 the certificate is used for reserve purposes, in an amount either approved by
41 the superintendent in writing or not more than the amount fully insured by
42 ~~the federal deposit insurance corporation or the national credit union~~
43 ~~administration or any successor agency~~ AN INSURING ORGANIZATION.

1 Sec. 7. Section 6-322, Arizona Revised Statutes, is amended to read:
2 6-322. Interstate acquisitions; approval of superintendent;
3 exception

4 A. Except as otherwise expressly permitted by federal law, an
5 out-of-state financial institution shall not acquire an in-state financial
6 institution unless the superintendent has approved the acquisition. The
7 superintendent shall not approve an acquisition unless the superintendent has
8 determined that deposits held in this state will be insured by ~~the federal~~
9 ~~deposit insurance corporation~~ AN INSURING ORGANIZATION when business in this
10 state is commenced.

11 B. For those out-of-state financial institutions required to obtain
12 approval from the superintendent as prescribed by subsection A OF THIS
13 SECTION, the acquiring financial institution shall submit to the
14 superintendent a written application for approval in the form the
15 superintendent prescribes. The acquiring financial institution shall
16 accompany the application with such information, data and records as the
17 superintendent may require in order to make the determination. In an
18 interstate transaction, the superintendent may accept an application that is
19 in the form and manner prescribed by the state or federal agency that is the
20 primary regulator of the applicant and that is supplemented as necessary to
21 allow the superintendent to determine whether to deny or approve the
22 application. The superintendent shall adopt rules prescribing the form and
23 the information, data or records that the superintendent requires. In
24 evaluating applications for acquisition pursuant to subsection F OF THIS
25 SECTION, the superintendent may give consideration to the potential impact of
26 the acquisition on the financial stability of the acquiring institution.

27 C. A newly established in-state financial institution created for the
28 purpose of acquiring all or substantially all the assets of a former in-state
29 financial institution from an out-of-state financial institution shall not
30 constitute a de novo entry if the acquisition by the newly established
31 in-state financial institution is completed within ninety days ~~of~~ AFTER the
32 date on which the out-of-state financial institution acquired all or
33 substantially all of the assets of the former in-state financial institution.

34 D. In the case of an out-of-state financial institution that is not
35 required to obtain the approval of the superintendent, the out-of-state
36 financial institution shall give written notice of the acquisition to the
37 superintendent ten days before the effective date of the acquisition, unless
38 a shorter time is prescribed by federal law.

39 E. From and after August 31, 2001, an out-of-state financial
40 institution may acquire a branch of an in-state financial institution for
41 operation as a branch without acquiring the entire in-state financial
42 institution or its permit. A branch of an in-state financial institution is
43 not eligible to be acquired unless it has been in continuous operation five
44 or more years.

1 F. Notwithstanding subsection E **OF THIS SECTION**, an out-of-state
2 financial institution may acquire a branch of an in-state financial
3 institution without acquiring the entire institution if all of the following
4 apply:

5 1. The financial institution proposed to be acquired is in danger of
6 being placed in receivership.

7 2. The acquisition is necessary to protect the financial interests of
8 the in-state financial institution's depositors and creditors.

9 3. The terms of the acquisition are acceptable to the relevant federal
10 agency.

11 4. The superintendent approves the acquisition pursuant to this
12 section in writing.

13 Sec. 8. Section 6-384, Arizona Revised Statutes, is amended to read:

14 **6-384. Deposit of fiduciary funds**

15 Cash held by a bank as fiduciary may be deposited to the credit of the
16 bank as such fiduciary on time or demand account with itself or with any
17 other bank the deposits of which are insured by ~~the federal deposit insurance~~
18 ~~corporation~~ **AN INSURING ORGANIZATION**. Unless otherwise provided by the
19 writing creating the trust, if such funds are deposited with itself the bank
20 shall secure such deposits with securities described in section 6-352,
21 subsection **A D**, paragraph 2, or other security approved by the superintendent
22 for the purpose, in the amount of the deposit, subject to ~~subsection C of~~
23 section 6-245, **SUBSECTION C**.

24 Sec. 9. Section 6-395, Arizona Revised Statutes, is amended to read:

25 **6-395. Possession by superintendent and receivership**

26 If the status of a bank as an insured bank is terminated by ~~the federal~~
27 ~~deposit insurance corporation~~ **AN INSURING ORGANIZATION** or the superintendent
28 finds that a bank is in such an unsafe or unsound condition that it is or
29 will become unable to meet the anticipated demands of its depositors and that
30 the condition cannot be corrected by the procedures of chapter 1, article 5
31 of this title or section 6-137, the superintendent may immediately take
32 possession and control of the bank and in such event shall, through the
33 attorney general, apply to the superior court for the appointment of a
34 receiver for the bank. The court may act upon the application forthwith and
35 without notice to any person. If at any time the court finds that no ground
36 for receivership exists, the receivership shall be dissolved and the
37 superintendent's possession terminated.

38 Sec. 10. Section 6-395.06, Arizona Revised Statutes, is amended to
39 read:

40 **6-395.06. Rights, powers and duties of a receiver**

41 A. After taking possession of the bank, the receiver may do any of the
42 following in its own name, in the name of the bank, in the name of both or
43 otherwise:

44 1. Collect all obligations and money due the bank.

1 2. Exercise and possess all the rights, powers and privileges of the
2 bank and its officers and directors.

3 3. Institute or otherwise participate in any legal proceeding by or
4 against the receiver or the bank, or in which the bank or its creditors have
5 an interest, and in every way represent the bank and its creditors.

6 4. Be the custodian of all monies coming into the receiver's
7 possession, but it may deposit any part of those monies in a bank instituted
8 by ~~the federal deposit insurance corporation~~ AN INSURING ORGANIZATION.

9 5. Invest or reinvest those portions of the monies and assets of the
10 bank as the receiver deems appropriate.

11 6. Revise or settle any obligation on those terms and conditions that
12 the receiver deems appropriate.

13 7. Sell, compound, compromise or assign debts due the bank on those
14 terms and conditions that the receiver deems appropriate.

15 8. Negotiate settlements of claims against the bank on those terms and
16 conditions that the receiver deems appropriate.

17 9. Settle, compromise or obtain the release of claims against the bank
18 for cash or other consideration.

19 10. Sell, exchange, encumber or otherwise deal with any real or
20 personal property that has come into the bank's possession by any means on
21 the basis of reasonable market value without notice for cash or on those
22 terms and conditions that the receiver deems appropriate.

23 11. Execute, acknowledge and deliver any deed or other instrument
24 necessary or proper for any purpose.

25 B. Any deed or other instrument executed pursuant to subsection A,
26 paragraph 11 OF THIS SECTION is valid for all purposes as if it had been
27 executed as the act and deed of the bank.

28 C. The receiver may disburse monies for any of the following:

29 1. The discharge of any taxes, assessments or charges of any nature
30 against the bank or the receiver or on any asset or other property in which
31 the bank or the receiver has an interest.

32 2. The protection or improvement of any asset or other property of the
33 bank.

34 3. The costs and expenses of the liquidation and for exercising the
35 receiver's rights, powers, privileges and duties.

36 4. Debts and interest owed by the bank that arise out of the
37 liquidation or otherwise.

38 5. The costs and expenses of the operation of the bank.

39 D. Notwithstanding the grant or denial of any power or duty prescribed
40 in this chapter, the receiver has those rights, powers, privileges,
41 immunities and duties authorized or imposed from time to time in specific
42 cases by order of the court.

1 Sec. 11. Section 6-395.07, Arizona Revised Statutes, is amended to
2 read:

3 6-395.07. Sale of bank assets; authority to borrow monies;
4 injunction; hearing

5 A. The receiver may sell all or any part of the bank's assets to
6 another bank, to a savings and loan association, to ~~the federal deposit~~
7 ~~insurance corporation~~ AN INSURING ORGANIZATION or to an instrumentality of
8 the United States government. The receiver may borrow from ~~the federal~~
9 ~~deposit insurance corporation~~ AN INSURING CORPORATION, an instrumentality of
10 the United States government or a private insurer ~~which~~ THAT insures or
11 guarantees the bank's investment certificates any amount necessary to
12 facilitate the assumption of investment certificate liabilities by a newly
13 chartered or existing bank, assigning any part or all of the assets of the
14 bank as security for that loan.

15 B. If the receiver has taken possession of the property and business
16 of a bank, that bank, within ten days after the taking, if it deems itself
17 aggrieved, may apply to the court in the county in which the principal place
18 of business of the bank is located to enjoin further proceedings. The
19 receiver may exercise all powers granted by this article during the ten day
20 period after taking possession of the property and business of the bank. The
21 court, after ordering the receiver to show cause why further proceedings
22 should not be enjoined and after a hearing and a determination of the facts
23 on the merits, may dismiss the application or enjoin the receiver from
24 further proceedings and direct the receiver to surrender the property and
25 business to the bank or make such further order as the court determines.

26 Sec. 12. Section 6-395.09, Arizona Revised Statutes, is amended to
27 read:

28 6-395.09. Notice to claimants on liquidation

29 As soon after the commencement of liquidation as practicable the
30 receiver shall cause notice of the liquidation to be published in a newspaper
31 of general circulation in each county in which the bank has an office, once a
32 week for eight successive weeks. The notice shall demand that all persons
33 who have claims against the bank present them to the receiver and make legal
34 proof thereof, in accordance with the procedure prescribed in the
35 notice. The receiver shall mail a copy of the notice at the address shown on
36 the records of the bank, to each person who appears from the records to be a
37 creditor of the bank, with the advice of the nature and amount of the
38 purported indebtedness, provided that the notice in respect to any
39 indebtedness to which ~~the federal deposit insurance corporation~~ AN INSURING
40 ORGANIZATION claims complete subrogation need be made only to the ~~corporation~~
41 INSURING ORGANIZATION. The receiver's advice of a purported indebtedness
42 shall not bind the receiver on the validity or the amount of any claim based
43 thereon.