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STATE OF MARYLAND

COMMISSION TO REVISE THE ANNOTATED CODE

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November 26, 1979

# REPORT ON HOUSE BILL 1

# FINANCIAL INSTITUTIONS ARTICLE

## I. PURPOSE AND SCOPE OF CODE REVISION.

The proposed Financial Institutions Article (HB1) is a product of the continuing revision of the Annotated Code of Maryland, undertaken by the Commission to Revise the Annotated Code. This process was inaugurated during the First Extraordinary Session of 1973 and to date has resulted in the enactment of nine new major articles: Agriculture, Commercial Law, Corporations and Associations, Courts and Judicial Proceedings, Education, Estates and Trusts, Natural Resources, Real Property, and Transportation.

Each of these articles was a formal bulk revision as mandated by the guidelines established in 1970, and included an improved organization, elimination of obsolete or unconstitutional provisions, resolutions of inconsistencies and conflicts in the law, corrections of inadvertent gaps or omissions in the law, deletion of repetitive or otherwise superfluous language, and general improvement of language and expression.

The same guidelines have been followed in the preparation of the Financial Institutions Article. It is to be emphasized that the basic thrust of the Commission's work is formal and not substantive change; the primary purpose of its work is modernization and clarification and not policymaking. Nevertheless, at some points in its work, it becomes necessary to make recommendations which involve the



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substance of the law. In each case, the Commission has made every effort to assure that its recommendation conforms as nearly as possible to the apparent intent of the legislature and the revisor's notes attached to the appropriate section explain each change made and the reasons for it. All significant changes have been noted carefully in the revisor's notes and are discussed in this report.

Additional issues involving fundamental policy also are noted. Since the resolution of these issues is beyond the purview of the revision process, no attempt is made by the Commission to resolve them other than by calling them to the attention of the General Assembly for its independent action.

The general rule of construction applied by the courts to a bulk revision of this nature was stated in Welch v. Humphrey 200 Md. 410, at 417 (1952):

> "It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code."

See also, Crow v. Hubard, 62 Md. 560 (1884); Baltimore Tank Lines v. Public Service Commission, 215 Md. 125 (1957); Welsh v. Kuntz, 196 Md. 86 (1950), 75 A 2d 343; Bureau of Mines v. George's Creek Coal and Land Co., 272 Md. 143 (1974); and Matter of Anderson, 20 Md. App. 31 (1974).

## II. FORM AND ORGANIZATION.

The Financial Institutions Article being introduced for the 1980 regular session of the General Assembly conforms with the organizational form and numbering system used in previously revised articles. Accordingly, it will be published in a separate unnumbered volume and in accordance

with Art. 1, § 25 of the Code will be cited by name.

The text of the article is printed in all capital letters as though it were all new material. However, in most instances comparisons with the present form indicate that changes are largely stylistic.

Each section -- or, in some instances, subsection -- of the proposed article is followed by a revisor's note (RN) that explains all significant changes made by the revision. These notes also facilitate comparison of the revised article with the law it replaces, and they show the relationship between present and proposed Code provisions.

Furthermore, the revisor's notes -- while not a part of the law itself (see Section 6 of HB 1, page 612) -- serve an important function in preserving the intent and substance of the present or source law, indicating that, with minor exceptions, the sole intent behind the revision is clarity and style rather than substance. In Murray v. State, 27 Md. App. 404 (1975), the Court of Special Appeals recognized the importance of revisor's notes not only as a statement of the revisor's intent, but as a statement of legislative intent as well:

> "These notes were part of the legislation enacting the revisions explaining to the legislators not only what changes were effected but what their expressed intention was in changing the wording." Murray v. State, 27 Md. App. 404, 340 A 2d 402, (Emphasis in original).

Because of their importance as recognizable elements of legislative history, only minimal administrative changes will be made in the revisor's notes to the bill before its final printing.

## III. FINANCIAL INSTITUTIONS ARTICLE.

The proposed article includes substantially all provisions of the public general law dealing with the various financial instituions regulated by law.

It includes the licensing and general operations of banks, credit unions, savings and loan associatins, consumer credit lenders, and miscellaneous institutions. Among these are bank service corporations, foreign banks, secondary mortgage lenders, sellers of money orders and travelers checks, mortgage bankers, mortgage brokers, and safe deposit companies. The article does not include the credit or interest regulating (usury) provisions that control the actual making of loans. These will remain where they are in

Vol. 2 of the Commercial Law Article. Also included in the Financial Institutions Article are the State-chartered insuring corporations for credit unions and savings and loans, and certain State operated financial programs. These are the Maryland Industrial Development Financing Authority, Maryland Small Business Development Authority and the Home Financing Program.


Title 1. Definitions; general provisions.

Title 2. Bank Commissioner and Boards.

Title 3. Banking institutions -- Commercial banks.

Title 4. Banking institutions -- Savings banks.

Title 5. Banking institutions -- General provisions.

Title 6. Credit Unions.

Title 7. Maryland Credit Union Insurance Corporation.

Title 8. Savings and Loan Associations -- Board of Commissioners and Division.

Title 9. Savings and Loan Associations -- General Provisions.

Title 10. Maryland Savings-Share Insurance Corporation.

Title 11. Consumer Credit.

Title 12. Miscellaneous Institutions and Activities.

Title 13. State Operated Financial Programs.



Each title of the Financial Institutions Article was prepared initially by the Commission staff. Staff members contributing to the article were: Associate Revisors Elizabeth Buckler Veronis and Robert A. Melville, Assistant Revisors Pamela Baldwin, Joseph Bernstein and Jean Bienemann, and Adjunct Revisor Patricia Storch. The Commission is indebted to Commissioner (and former Director) Avery Aisenstark, who drafted and reviewed a considerable portion of the material in the article. Elizabeth Buckler Veronis was the Associate Revisor in charge of the article and supervised internal conforming and final preparation of the article. The Commission subcommittee, which thoroughly reviewed all drafts, was chaired by Lowell R. Bowen, Esq, and consisted of: Avery Aisenstark, Esq., M. Michael Cramer, Esq., P. McEvoy Cromwell, Esq., Elise Mason, Esq., Leslie J. Polt, Esq., Roger Redden, Esq., Zelig Robinson, Esq. John Paul Rogers, Esq., Share D. Stiller, Esq., and

James J. Winn, Jr., Esq. Also working with the Committee were the following Legislative Consultants: Senators Robert Douglass and Laurence Levitan, Delegate Dennis McCoy and former Delegate John Ward. Following Committee approval of the proposed article, it was then submitted to the full Commission for further review and approval.

The financial industry in this State was involved to a great extent in drafting the proposed Article. Copies of the various drafts were sent to all affected State regulatory authorities, including the Bank Commissioner, Director of the Division of Building, Savings and Loan Associations, Commissioner of Consumer Credit, and appropriate officials in other organizations directly affected by the material in the proposed article. Their comments and suggestions were used extensively in the revision process. Many of the ideas incorporated in the Article were developed through these cooperative efforts.

The following is a list of those who greatly assisted the Financial Institutions Committee and staff in the revision:

Howard C. Beck, Jr.
Executive Director
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Insurance Corp.

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Assistant Attorney General
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IV. DETAILED DESCRIPTION OF THE FINANCIAL INSTITUTIONS ARTICLE.

A. In General.

Throughout this article, the Commission has proposed a number of similar or identical changes. Some of them are:

1. Boards and terms of office.

The provisions for establishing regulatory boards or boards of directors have been treated in similar fashion to the extent that the law permits. This structure of providing similarly for board composition, meetings, compensation, and staff and for the terms and qualifications of members incorporates a standard form developed by the Commission and approved by the General Assembly in the enactment of Chapter 715, Acts of 1979, the Electrology Practice Act.

In the present law, the terms of office of board members, particularly those that are staggered, are set out in lengthy sections using many long past dates. To simplify these provisions and allow for the numerous changes that have been made to these boards, the Commission has employed a standardized form which states the composition of the board on July 1, 1980, the proposed effective date of the Financial Institutions Article. The proposed law states: "The terms are staggered as required by the terms of the members serving on July 1, 1980". A revisor's note sets out in further detail when the members' terms expires. See e.g., § 8-202(d)(2).

2. Licensing Provisions.

In many places in this proposed article, there are provisions for licensing persons to engage in various regulated activities. Like the provisions for the board membership, these licensing and renewal provisions have all been drafted in similar manner to the extent possible. Many of these provisions also are based on the standard form referred to in paragraph A.1.

3. Status of Baltimore City.

The definition of "county" in § 1-101(g) includes a county of this State and also Baltimore City. This

definition has been inserted to make clear that, unless Baltimore City is expressly excluded from a particular section, the term "county" also includes Baltimore City.

4. Bonding requirements.

There are many instances where a bond is required for certain State employees, such as those of the Bank Commissioner's office. Throughout the article these provisions have been deleted in light of Art. 78A, §§ 47 and 48 and the fact that all State employees are covered by a blanket bond. See e.g., the revisor's note to § 2-103.

5. Termination or "Sunset" provisions.

In revising those sections of the present law that call for termination of certain provisions, the Commission, in most instances, has directly translated the sections listed in the present law to the corresponding section of the revised article. This has proven difficult due to the numerous gaps and inconsistencies in the coverage of the "sunset" provisions, and the breaking down and reorganizing of the present law as it is revised. In the area of the powers and duties of the Bank Commissioner, Title 6, Subtitle 1 of the Corporations and Associations Article has been included in the proposed Financial Institutions Article, but none of these Corporations and Associations sections were subject to termination even though they dealt with the powers and duties of the Bank Commissioner. As they could not be sorted out, the Commission has expanded the applicability of the termination provisions to all regulatory functions of the office within the article. This appears to be in keeping with the General Assembly's intent in establishing the evaluation program. See the revisor's note to § 2-401.

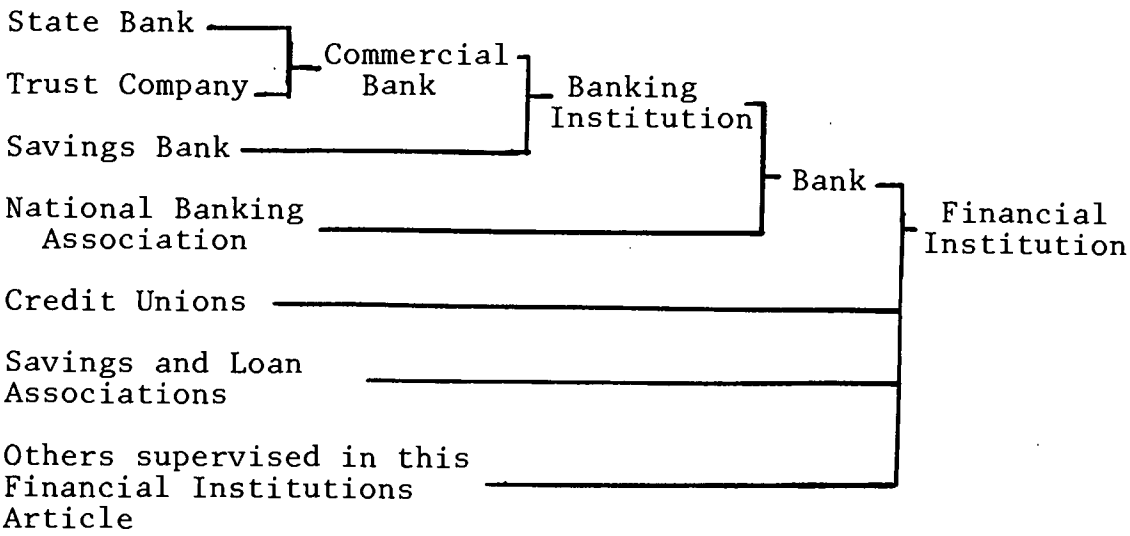
In Titles 8 and 9 of this article, relating to the regulation of savings and loan associations, the General Revisor's Notes point out those sections that are not covered by a direct translation of the present termination law, but are inherently regulatory in nature or require action by the Board of Commissioners or Division of Savings and Loan Associations.

In Title 11, Subtitles 2 through 4 are not subject to termination, although the office of the Commissioner of Consumer Credit is covered.

B. Title 1. Definitions; General Provisions.

Subtitle 1 of this title, as with other revised articles, contains those definitions that apply throughout the article. Among these 15 defined terms are several that

include one or more of the various institutions regulated in this article. As the provisions relating to State banks and trust companies are frequently identical, the term "commercial bank" is used to refer to either of them except where the distinction is required. Similarly, the term "banking institution" includes State banks, trust companies, and savings banks. If federal banks, properly known as national banking associations, or foreign banks are included, the trilogy "bank, savings bank, or trust company" is used. The following chart depicts these relationships:




Title 1, Subtitle 2 contains general provisions stating the relationship between the Maryland General Corporation Law and this article, the procedure for acknowledgments and verification, and compliance with Workmen's Compensation Law. Section 1-202 sets out a standard procedure for acknowledgments and verifications required by the article and is based on the procedures called for in CA § 1-302 and Maryland Rule 5c.

Subtitle 3 relates to Confidential Financial Records. It applies to virtually all of the institutions supervised under this article. (See definition of fiduciary institution in § 1-301(b).). In § 1-303, reference to federal law has been substituted for a specific reference to a chapter of the Internal Revenue Code to recognize the dictates of federal law and to avoid a problem of conflicts between laws. The revisor's note to § 1-305, which relates to penalties for disclosure, asks whether the scope of the section should be expanded to include directors and agents, such as bank service corporations that maintain records.

C. Title 2. Bank Commissioner and Boards.

1. In general.

Title 2 contains provisions dealing with the creation and operation of the office of the Bank Commissioner and of the Banking Board and Bank Regulations Board.

2. Subtitle 1. Bank Commissioner.

This subtitle contains specific provisions for the appointment, qualifications, and compensation of the Bank Commissioner and Deputy Bank Commissioner. This subtitle also contains general authority for additional staff.

Section 2-103(e) is revised to clarify that the Deputy Bank Commissioner has not only the duties, but the powers of the Bank Commissioner, in the instances when that office is vacant or the Bank Commissioner is unable to perform the duties. Provision also is made for the delegation of those powers and duties.

The exercise of these powers and duties are subject to the authority of the Secretary of Licensing and Regulation.

Section 2-107(a) provides for an annual report to the Governor on the operation of the office. Present law enables the Bank Commissioner to include in this report recommendations as to Article 11 of the Code. As revised in § 2-107(b), the Bank Commissioner may recommend to the Secretary any amendments to the laws that the Bank Commissioner administers.

The Commission notes the different language used in §§ 2-110(b) through 2-112. Section 2-110(b) limits the outside activities of the Bank Commissioner and Deputy and refers to "business relating to banks and financial institutions". Section 2-111 prohibits stock ownership by the Bank Commissioner or an employee in "any institution ... subject to examination or supervision by the Bank Commissioner". Section 2-112 prohibits indebtness by the Bank Commissioner or an employee "to any institution that is subject to the jurisdiction of the Bank Commissioner" or selling or negotiating loans "to or with any banking institution or credit union". Only § 2-112 provides an express penalty.

Throughout this article, the full title "Bank Commissioner" is used to refer to this official, and present definitions of the word "Commissioner" to mean the Bank Commissioner are deleted.

3. Subtitle 2 Banking Board.

This subtitle contains provisions for the appointment, qualification, term, and compensation of members of the Banking Board.

Section 2-202(b)(2) is revised to limit nominations for vacancies to the organization that is to be represented by that member.

4. Subtitle 3. Bank Regulations Board.

This subtitle provides for the composition of the Bank Regulations Board and the qualifications, terms, and compensation of its members.

This subtitle is derived from present Art. 11, §§ 67 and 72, which describe an unnamed entity in identical terms except that § 67 requires appointment of three members by the Governor "with the advice of the Secretary", while § 72 refers only to their appointment by the Governor. As revised, § 2-302 retains the provisions for advice.

5. Subtitle 4. Termination of certain provisions.

This subtitle deals with the previously discussed provisions for the possible termination of the office of Bank Commissioner, the Banking Board, and the Bank Regulations Board.

D. Titles 3 through 5. Banking Institutions.

These titles contain the provisions for the formation, operation, and regulation of the three State-chartered banking institutions -- State banks, trust companies, and savings banks.

As revised, these provisions retain differences that reflect the distinctive characteristics of each type of banking institution. However, many of the present provisions that relate to only one type of banking institution are similar to other provisions that relate to another type of institution. These provisions are revised to conform to one another or combined into one generally applicable provision. As to State banks and trust companies in particular, provisions for "commercial bank{s}" replace separate provisions for or references to State banks and trust companies.

Title 3. Banking Institutions -- Commercial Banks.

1. In general.

This title contains provisions for the formation, initial capitalization, and certification to do business as a commercial bank.

It also contains provisions for charter amendments and capitalization of branches.

As stated in § 1-201 of this article, the Maryland General Corporation Law applies to banking institutions and their corporate acts to the extent that this article does not provide otherwise.

Provisions of present law that are merely repetitive of the Maryland General Corporation Law are deleted as unnecessary. In some instances, express reference to the Maryland General Corporation Law is substituted for the present provision, for clarity.

The Commission also felt that some provisions governing banking institutions varied unnecessarily from the provisions of Maryland General Corporation law. For example, present law requires one copy of articles of incorporation that are approved by the Bank Commissioner to be filed with the State Department of Assessments and Taxation and with the clerk of court for the county where the institution is to be located. The revised provisions require filing for record only with the Department. In light of this change, the number of copies to be filed initially with the Bank Commissioner is reduced from three copies to two copies. Similar changes have been made throughout the article.

New language is added to clarify that articles must be approved by the Bank Commissioner or the articles are not effective on filing with the Department of Assessments and Taxation. If approved and then filed, the banking institution becomes a corporation.

2. Subtitle 1. Definitions; general provisions.

In § 3-101(b), the definition of "capital stock" is revised to delete the misleading reference "outstanding". In the present law, some references to "capital stock"" mean "authorized capital stock". As necessary, the references "outstanding" or "authorized" have been added to the text.

3. Subtitle 2. Formation and powers.

Section 3-202(b) is revised to standardize the articles of incorporation for State banks and for trust companies and to conform to the Maryland General Corporation Law. This subsection provides that the articles must include the names and addresses of the incorporators and the names and residence addresses of the initial directors. Section 3-203(b)(2) is revised to require the Bank Commissioner to determine the character of the directors so named.

Section 3-206 states that a commercial bank has the general powers of a Maryland corporation unless otherwise provided. Subsection (b) contains references to certain of

these powers that are subject to special provisions and lists additional powers related to carrying on the business of banking. Section 3-206(b)(12) is restated expressly to enable commercial banks to exercise other powers "usual in carrying on a banking business", rather than as an introduction to the list of powers now stated. Section 3-206(b)(6), as to the issuance of debt instruments, is derived from present provisions that relate only to trust companies, but listed here as a usual power of a State bank also.

The Commission notes that the power to "receive deposits of money, securities, and other personal property from any person", now listed as a power to a trust company, in § 3-207(1), may be a power usual to banking business and equally applicable to State banks.

Section 3-212 provides a standard provision for the examination of a commercial bank before it is certified to do business and is derived from the present elements applicable only to State banks or to trust companies.

4. Subtitle 3. Capital stock; surplus requirements; stockholders.

Section 3-301, as revised, applies to the subscriptions for capital stock of a trust company, as well as the currently referenced State banks.

Section 3-310 combines present provisions for the annual meetings of the stockholders of a State bank and of a trust company and is revised to provide a standard provision. Subsection (a) of this section enables the meetings to be held at a place other than the banking office.

Section 3-313 is revised to require reports on stockholders of a commercial bank annually and when the Bank Commissioner requires. The Commission notes for the consideration of the General Assembly that problems may have resulted because these reports are not confidential.

Section 3-314(a)(2) is a new definition of "bank holding company" added to clarify the present, undefined reference.

As revised, § 3-314 applies to all stock acquisitions, rather than just acquisitions by purchase.

5. Subtitle 4. Directors and officers.

Section 3-402 provides a uniform means for designating the number of directors of a commercial bank by providing

that the bylaws of a State bank may specify the number. 534

The Commission asks if the requirement that a director own capital stock of the commercial bank or its holding company now serves a purpose. 535 536 537

Section 3-406 provides a uniform provision for the tenure of directors of both State banks and trust companies. 538 539

Section 3-407, as revised, no longer applies to savings banks, but only to commercial banks. Additional directorships of savings banks would be subject to the Maryland General Corporation Law, as more in keeping with its mutual association form. 541 542 543 544 545

Section 3-410 applies a standard requirement for a quorum to both State banks and trust companies. This requirement is a majority, subject to charter or bylaws provisions. 546 547 548 549

Section 3-411(b) is revised to reflect that, under the Maryland General Corporation Law, the bylaws may specify other than a 1-year term for officers. 550 551 552

6. Subtitle 5. Common trust funds. 554

Section 3-518(c)(2) allows for independent nominees by stating that a trust company must control or operate a nominee before the requirement that the trust company "supervise" the nominee is imposed. 555 556 557 558

7. Subtitle 6. Miscellaneous regulations. 560

The Commission has retained § 3-601(a)(4) since it is unsure if the intent of this provision exempted otherwise illegal liabilities if they existed in 1937 or prospectively excluded these liabilities from inclusion as "liabilities". 561 562 563

Section 3-601(c)(1) is revised to apply to standby letters of credits. 565 566

Section 3-602(b) is revised to clarify that exemptions of directors from these loan prohibitions are personal, not transactional. 567 568 569

As to § 3-605, the Commission notes that savings banks are not enabled to own and lease personal property and, therefore, do so through affiliates that are not subject to these restrictions. 570 571 572 573

Section 3-606 governs certification of drafts by commercial banks only, although savings banks do issue and certify drafts. 574 575 576

8. Subtitle 7. Consolidations, mergers, and transfers of assets.

This subtitle is revised to apply to transfers of assets, which are not addressed currently in Art. 11. The Commission determined that transfer provisions should parallel the present provisions for merger and consolidation. All of these transactions would be subject to this subtitle rather than the Maryland General Corporation Law. Section 3-712, however, is revised to clarify that it applies only to mergers. Section 3-713 applies only to mergers and consolidations. Section 3-714 applies only to transfers of assets.

Section 3-704(b)(2) is revised to allow waivers of the notice requirement if any constitutent bank -- not just the successor -- is in economic trouble.

Section 3-720(b)(3) is revised to conform to the requirements of the Maryland General Corporation Law that appraisers give notice of the determination.

9. Subtitle 8. Conversions and voluntary dissolution.

Sections 3-801 and 3-802 are revised to apply to trust companies, as well as State banks, as apparently intended.

Section 3-802(d) is new language added to keep current the records of the Department of Assessments and Taxation.

Section 3-804 is revised to apply only to trust companies, since other banking institutions are not able to serve as fiduciaries.

Title 4. Banking Institutions -- Savings Banks.

1. In general.

This title contains provisions specifically limited to savings banks and, to the extent possible, conforms to similar provisions governing commercial banks.

Throughout this article, the term "savings bank" is substituted for references to "mutual savings institutions" and "mutual savings banks".

Also, throughout this article, references to savings banks with, or without, "capital stock" are deleted as obsolete since savings banks now are prohibited from having capital stock and previously exempted savings banks no longer exist.

2. Subtitle 2. Formation and powers.

Section 4-202 is revised to conform to the similar provisions for commercial banks and, as noted, the Maryland General Corporation Law. In particular, § 4-202(b)(4) now imposes limitations on the names of savings banks. 620 621 622 623

Section 4-206 states that a savings bank has the general powers of a Maryland corporation, unless otherwise provided. Subsection (b) references certain limitations on these powers and lists additional powers. Section 4-206(b)(8) is new language added to state expressly that savings banks may carry on "a business of savings banking". 624 625 626 627 628

The Commission notes that the numerous provisions for examination of a commercial bank before its certification to do business are not stated as to savings banks. The power to withhold the certificate is only implicit. 630 631 632 633

3. Subtitle 3. Guaranty fund. 635

Section 4-302(c) is revised to prevent a reduction of the guaranty fund on abandonment of a branch unless the Bank Commissioner approves. 636 637 638

4. Subtitle 5. Directors. 640

Several sections of this subtitle are new language added to parallel provisions as to commercial banks. 641 643

Section 4-501 provides expressly for management of a savings bank. 644 645

Section 4-506 provides for the tenure of the directors. 646

Sections 4-508, as to vacancies, and 4-509, as to quorums, also are new language. 648 649

5. Subtitle 6. Miscellaneous regulations. 651

Section 4-601 is revised to clarify that the bylaws must reflect notice requirements for withdrawals. 652 654

6. Subtitle 7. Extraordinary actions. 656

Section 4-701 now applies to transfers of assets. This change conforms to the similar change as to commercial banks. 657 658 659

Section 4-702, as to voluntary dissolutions, differ from the requirements for dissolution of a commercial bank, which expressly require approval of the Bank Commissioner and solvency. 660 661 662 663

Title 5. Banking Institutions -- general provisions. 664

1. In general. 667

This title contains provisions of general applicability 668
to all banking institutions and includes reports, 669
examinations, deposits, affiliates, branches, electronic 670
terminals, real property investments, additional banking
services, membership in federal entities, reorganizations, 671
bank holidays, and penalties. 672

2. Subtitle 1. Definitions. 674

This subtitle repeats the definitions of "capital 675
stock", "savings bank" and "trust company", which appear in 676
other titles, but apply in this title also. 677

This subtitle also defines the terms "examiner" and 678
"federal banking authority" for simpler reference. 680

3. Subtitle 2. Examinations and reports. 682

The Commission notes that the appropriate scope of § 683
5-202(c)(1)(i) is unclear, since it may be read to refer to 684
interference in performance of any duty or in performance of 685
the duty to make an examination. 686

Sections 5-206 and 5-207 are revised to provide 687
standard reporting requiremets for all banking institutions, 688
rather than the similar provisions as to commercial banks 689
and savings banks. The special reports filed under § 5-207
are not subject to the publication requirements for regular 690
reports. 691

Section 5-209(a)(4) is new language that allows for 692
information to be obtained from federal banking authorities, 693
by insuring its confidentiality. 694

4. Subtitle 3. Deposits. 696

Section 5-301 is revised to provide for "time account 697
services" currently provided by banking institutions and 698
encompassing the functions of the now referenced "savings 699
department". 700

Sections 5-307 and 5-308 are revised to apply to 701
savings banks, as well as commercial banks, in accordance 702
with the apparent intent. 703

As to § 5-308, there do not appear to be other 704
provisions that impose a minimum penalty, but are silent 705
about a maximum penalty. The deletion of this minimum 706
penalty does create an express maximum penalty, as contained
in the general penalty provisions of this title. This 707
maximum penalty, however, may have applied in any event. 709

5. Subtitle 4. Affiliates. 711

This subtitle contains the provisions of present Art. 712
11, § 72 except as that section relates to the composition 713
of the Bank Regulations Board. 714

As to § 5-403(c), the Commission is unsure whether the 715
present language allows or requies approval after a 716
determination of compliance with the enumerated criteria. 718

The Commission also points out the possible inequity of 719
the fee provisions as to examinations. 721

6. Subtitle 5. Miscellaneous regulations. 723

Section 5-501 provides a standard provision generally 724
applicable to banking institutions, except for subsection 725
(d), which provides only for judicial review of a branch 726
application of a savings bank. 727

Section 5-502(e), as revised, includes the rules and 728
regulations of the Bank Commissioner with the standards that 729
are not to be violated. 730

Sections 5-503 and 5-504 are revised to provide uniform 731
standards applicable to all banking institutions. 733

Section 5-505 is derived from Art. 78, § 32(b)(9) and 734
incorporated in this article, as a restriction on activities 735
by a banking institution. The definition of "armored car 736
service" is new language suggested by the Art. 78 provision.

7. Subtitle 6. Reorganizations. 739

Section 5-602(a) is revised to apply only to commercial 740
banks, as the entities with capital stock. However, similar 741
provisions as to the guaranty funds of savings banks may be 742
appropriate. 743

Subsection (b) of that section is revised to provide 744
similar procedural requirements. 745

Section 5-605(a) is revised to reflect that the court 746
designates a receiver. 747

Section 5-606(a) extends to any receiver the power to 748
appoint clerks. 749

The Commission points out the $5 limit on distributions 750
under § 5-606(d). 751

Section 5-611(b)(1)(iv) is revised to reflect that 752
protection of depositors and creditors may be a specific set 753

of provisions in a reorganization plan. 754

Section 5-615 refers to trust companies, as the only 755
type of banking institutions able to act in these fiduciary 756
capacities. 757

8. Subtitle 7. Bank holidays. 759

This subtitle contains those provisions of present Art. 760
13 that relate solely to openings and closings by banking 761
institutions. 762

Although, as originally enacted, the Art. 13 provisions 763
applied solely to banking institutions, cross references to 764
these provisions have broadened them to apply generally to 765
"legal holidays" in this State and amendments have 766
incorporated numerous, miscellaneous provisions. 767

The Commission proposes the inclusion of a definition 768
of "legal holiday" in Art. 1 for general application 769
throughout the Code and transfer of other diverse 770
provisions, such as the powers of the Governor in an
emergency, to other more appropriate articles. 772

Section 5-702 is new language that recognizes the 773
24-hour electronic terminals. 774

Section 5-706(b) is revised to apply in every county, 775
by deleting the present exception for Talbot and Howard 776
counties. 777

Section 5-707(b) provides for proclamations that 778
authorize or require closing and, as to authorized days, 779
provide procedures for deciding whether to close or open. 780

The numerous present provisions as to presentment, 781
notice, and protest are deleted as obsolete in light of the 782
Uniform Commercial Code. 783

9. Subtitle 8. Prohibited activities; penalties. 785

Sections 5-801 and 5-802 are revised to cover 786
separately a "unsafe or unsound banking practice" and a 787
violation of law, to reconcile the duty imposed on the Bank 788
Commissioner to report violations. Under § 5-802, as
revised, a director or officer of a banking institution is 789
still subject to the removal provisions in § 5-801. 791

Section 5-803 is revised to include falsification of 792
records of foreign banks that come under the jurisdiction of 793
the Bank Commissioner. 794

Section 5-806, as revised, enables national banking 795

associations and foreign banks to use the word "bank" without violation of this section.

Title 6. Credit Unions.

1. In general.

This title contains the provisions governing formation, operation, and regulation of credit unions.

Numerous provisions are revised to conform to the provisions that relate to banking institutions, in instances where the differences do not appear related to the unique characteristics of being a "credit union".

2. Subtitle 1. General provisions.

Section 6-104 is revised to enable federal and foreign credit unions to use the words "credit union" without violation of this section.

3. Subtitle 2. Formation and organization.

Section 6-201(b) specifies that incorporators must be adults. This conforms to the Maryland General Corporation Law and the banking laws.

As with the banking institutions, the requirement for filing approved articles of incorporation with the clerk of court is deleted, and the number of copies filed with the Bank Commissioner is reduced to two copies. However, incorporators of credit unions also must file copies of the proposed and approved bylaws.

Section 6-202(b) is revised to restate the required contents of the articles more closely to the provisions as to articles of banking institutions.

Section 6-204(d) is revised to delete the requirement for a separate "certificate of approval".

Sections 6-211 and 6-223 are revised to allow amendments of the bylaws at annual meetings and other meetings of the members.

In § 6-217(c)(2), the word "regular" is substituted for "monthly" since the board does not appear to be required to meet monthly.

As to § 6-220, the Commission notes that these provisions may limit removal, regardless of the bylaws, or may supplement any bylaw provisions.

4. Subtitle 3. Examinations and reports. 840

Section 6-301 states expressly that a credit union must 841
have a supervisory committee. 842

Section 6-302 is revised to conform to those provisions 843
for examination of banking institutions that are similar. 844
Section 6-302(b)(2) allows the supervisory committee of a 845
credit union to ask for an examination. 846

Section 6-307(b) is revised to clarify the unclear 847
provisions of present Art. 11, § 141(b), which may allow for 848
an order to be issued after the opportunity of a hearing or 849
to be issued before but effective after that opportunity. 850

As to § 6-308, it appears that present law does not 851
make information about credit unions confidential. 853

5. Subtitle 5. Loans. 855

Section 6-502 states expressly that a credit union must 856
have a credit committee. 857

The Commission questions whether § 6-506(a)(3) requires 858
approval of individual mortgage loans or of general mortgage 859
loan requirements. 860

The Commission points out the abuse that may result 861
from § 6-509(c). 862

Sections 6-511(a)(2) and 6-604 clarify that credit 863
unions may borrow among themselves. 864

6. Subtitle 6. Miscellaneous regulations. 866

The Commission notes its revision of § 6-602 adopts the 867
view that present Art. 11, § 154, as it relates to reserves 868
before 1978, was for transitional purposes only. However, 869
these provisions, if intended to prevent drawing down excess 870
reserves, should be clarified. 871

The Commission also asks if distributions should be 872
limited solely to "dissolution". 873

7. Subtitle 7. Extraordinary actions. 875

Sections 6-701(e)(3) and 6-702(f) provide for the 876
records of the State Department of Assessments and Taxation 877
to be current. 878

The General Assembly may wish to note the revision of § 879
6-703(f)(3), derived from the phrase "for a three year 880
period". 881

Title 7. Maryland Credit Union Insurance Corporation. 882

1. In general. 885

This title and Title 10, as to the Maryland 886
Savings-Share Insurance Corporation, are revised to conform 887
to the extent practicable. 888

2. Subtitle 1. Definitions. 890

In § 7-101(c), the present references to location of 891
the office of foreign and federal credit unions are used as 892
criteria for purposes of being a "credit union" under this 893
subtitle and not as a broad requirement for doing business
in this State. 895

As to § 7-104(g), the Corporation notes that the 896
referenced "National Share and Deposit Guaranty Corporation" 897
failed to complete incorporation. However, on September 19, 898
1979, a corporation known as the "International Share and 899
Deposit Guaranty Association, Inc." did incorporate in
Georgia. The name of this corporation perhaps should be 900
substituted for the referenced entity. 901

Section 7-105 states expressly that providing insurance 902
is a duty -- not a mere power. 903

With respect to the word "account" in § 7-105, the 904
Commission noted that the word is not defined and may result 905
in multiple accounts for one depositor. The Corporation 906
further clarifies that it interprets an account to be
insurable if the bylaws of the member credit union permit 907
the account to be opened. 908

The Commission notes that the provisions for possible 909
termination of the Corporation, in § 7-118, do not reference 910
§ 6-601, which requires State credit unions to be members. 911

E. Titles 8, 9 and 10. 914

Titles 8, 9 and 10 of this proposed article relate to 915
savings and loan associations. Title 8 covers the 916
regulatory structure; Title 9 consists of the substantive 917
provisions that govern savings and loan associations; and 918
Title 10 is the statutory charter of the Maryland
Savings-Share Insurance Corporation. 920

1. Title 8. 922

Title 8 consists of 4 subtitles. Subtitle 1 sets out 923
four additional definitions used in the title and the 924
overall legislative policy as to regulation of savings and 925
loan associations. This policy, along with the regulatory

structure, was established in 1961. Subtitles 2 and 3 cover the organization and authority of the Board of Commissioners and the Division of Savings and Loan Associations, respectively. Subtitle 4 relates to the administrative procedure followed by these agencies.

With the concurrence of the Board of Commissioners and the Division Director, the full title of each has been shortened by deletion of the word "building" to become instead the Board of Savings and Loan Association Commissioners and the Division of Savings and Loan Associations. The word "building" has long had only historical significance since savings and loan associations have never been involved in construction of homes. Additionally, to avoid confusion with a corporate board of directors of an association, the terms "Board of Commissioners" and "Division Director" are used as defined terms instead of the more commonly used terms "Board" and "Director".

The defined term "savings and loan association" is used uniformly and replaces varieties of the term, such as "building and loan", "building and homestead", "thrift institution", and "association". The various other terms, however, still are recognized as permissible in the name of an association.

The defined term "savings and loan association" incorporates three significant elements -- first, that the business is a corporation, second, that it is incorporated as a savings and loan association, and third, that it is chartered in this State. The use of the word "chartered" was purposely intended to include certain early associations that may have been chartered by a grant.

a. Board of Commissioners.

The nine members of the Board of Commissioners are divided between industry and public members. The industry members presently are divided so that three are from associations insured by the Maryland insuring agency (Maryland Savings-Share Insurance Corporation) and two members are from associations insured by the federal insuring agency (the Federal Savings and Loan Insurance Corporation). The 4-year term members are staggered.

The revision clarifies the Board of Commissioners' responsibility for keeping records, expressly including "hearing" in the provisions that requires a record of "meetings and transactions". Also in § 8-403, the former permissible provision that the Board "may" make a record of testimony and proceedings at its hearings is revised to state that the Board "shall make a record". This change is

in keeping with normal administrative procedure. 967

The present provision as to a quorum at any meeting of the Board leaves a gap as to the effect of vacancy on the requirement for a majority of the Board to be present. The revision clarifies majority as applying to members (then) "serving on the Board of Commissioners". 968 969 970 971 972

As part of its policy making authority, it is the Board of Commissioners that adopts rules and regulations to govern savings and loan associations. The Board also advises the Division Director on all matters, recommends legislation to the Secretary of Licensing and Regulations, and sets standards for examinations and audits, valuation of assets, and advertising and promotional activities. 973 974 975 976 977 979

b. Division of Savings and Loan Associations. 981

Former references to the Department of Building, Savings and Loan Associations, a forerunner of the Division, are deleted as obsolete. 982 983 984

In § 8-304, the deputy director is given authority to act as delegated by the Division Director or whenever the Director is "absent". The General Assembly may wish to consider paralleling a similar provision in banking law, which would give the deputy director express authority to act when the Director's office is "vacant" or when the Director is "unable to perform the duties of the office". 985 986 987 988 989 991

Although the office of the deputy director is expressly excepted from the State's Merit System, provision is made that allows a individual who is appointed from the State agency, the Division of Savings and Loan Associations, to return to the Merit System status previously held if the individual returns to the classified system after termination as deputy. The question here is whether the present provision is intended to apply when an individual is appointed from any State agency, not only the Division of Savings and Loan Associations. The General Assembly may wish to broaden this section in that regard. 992 993 994 995 996 997 998 999 1001

For clarity the Director expressly is given the power of removal as well as power of appointment over staff of the Division. 1002 1003 1004

In §§ 8-306 and 8-405, the Commission recommends substituting "savings account" or "capital stock", as appropriate, for the outdated term "free share account". 1005 1006 1007

In § 8-403, the Commission directs the General Assembly's attention to the use of the word "records" in connection with a subpoena. The term is substituted for 1008 1009 1010

"documents" since it has a broader meaning and could include books, papers, documents, and other tangible things (as in Maryland Rules 115 and 405) and possibly electronically recorded records. The General Assembly may wish to consider whether subpoena power should expressly include areas of modern record keeping such as automatic data processing products.

The Commission calls the attention of the General Assembly to the rights of appeal after administrative hearing. Although § 8-405 grants the right to holders of "at least 10 percent of the par value of the free shares" of an association, the same right of appeal is not now granted to 10 percent shareholders for hearings still at the agency level.

Each subtitle of Title 8 points out the specific sections or areas that are not now included in the Regulatory Programs Evaluation Act of 1978 (the "Sunset Act") but which are regulatory in some manner.

Additionally, the General Revisor's Note points out sections that are derived from statutes that are included in the "Sunset" provisions but, as revised, no longer contain any regulatory provision.

2. Title 9.

The Commission to Revise the Annotated Code has noted that this title, which relates to the substantive provisions that govern savings and loan associations, is based on anachronistic concepts and terminology, and that many areas are not covered. Much of this law dates back to the 1800's and relates to early types of savings and loan associations that no longer exist or are phasing out of existence; i.e., terminating associations, participating associations, and serial associations. Since a few serial associations are still in operation, the provisions that relate to them could not be simply deleted, nor is it possible to determine to what degree many of the later statutes were influenced by the earlier structures.

The concept of a "share" ownership is part of the concept of mutuality of ownership of an association by its "members". The addition of stockholders resulted in a confused or incompatible relationship between stockholders and "shareholders" so that it is not always possible to determine which term was intended to mean which kind of member. Membership in an association thus became a mixed bag of inequities.

State regulatory supervision, federal and State insurance requirements, the truth in lending statutes, the

usury law, and the influence of many years of case law have so modified the structure of associations that many statutes have no present application. Thus, the modern business of associations is not comprehensively covered by published law.

The statutes in this title are revised in the sense that they are reorganized and restated. The problems of conflicts, ambiguities, and gaps are perpetuated in this title as formally revised. Because this law requires a substantive revision not possible within the scope of the authority granted to the Commission to Revise the Annotated Code, the Committee on Economic Matters assembled a Savings and Loan Law Committee and asked it to examine these statutes and propose a substantive revision to the House Committee for introduction in the 1980 General Assembly.

The following persons who represent many segments of the savings and loan industry, the legal profession, the Commission, the regulatory and insuring agencies, and the legislature make up the Savings and Loan Law Committee: Lowell R. Bowen, Esq., Charles H. Brown, Jr., Jerome S. Cardin, Esq., Delegate R. Terry Connelly, Thomas Costantini, Delegate Nathaniel Exum, W. Thomas Gisriel, Esq., Franklin Goldstein, Esq., Charles H. Kresslein, Jr., Esq., James D. Laudeman, Jr., Esq., Delegate Donald F. Munson, William C. Rogers, Esq., Robert L. Stocksdale, Esq., David H. Wells, Jr., Esq., and Harry B. Wolf, Jr.

3. Title 10.

Title 10 of this article is the special statutory charter, enacted in 1962, of the Maryland Savings-Share Insurance Corporation ("MSSIC"). Although chartered by the legislature, MSSIC is an independent corporation, supported entirely by its member associations.

Since 1978, insurance of savings accounts has been mandatory, but discretion is allowed to insure through MSSIC or the Federal Savings and Loan Insurance Corporation. Of the 150 State-chartered associations, 133 are insured by MSSIC. This insurance requirement has the effect of giving some regulatory power to MSSIC or MSLIC. An association's choice of insuring agency is dependent, in part, on the comparable regulatory requirements such as maintenance of reserves and reporting requirements as well as the cost of insurance and the amount of insurance available. Despite this practical effect of having certain regulatory power, Title 10 grants no express regulatory authority to MSSIC; therefore, the provisions of Title 10 are not included in the Regulatory Programs Evaluation Act of 1978.

The broad definition of "association" in this title

purposely includes any federal association or foreign 1094
association that has its principal office in this State and 1095
75 percent of its assets invested in accordance with Title
9, Subtitle 4. The Commission points out, however, that 1096
although the State door to insuring federal associations is 1097
open, federal law requires insurance of federal associations 1098
exclusively by the federal agency. 1099

Although § 10-104(a) grants to MSSIC all the "powers, 1100
privileges, and immunities" possessed by any other 1101
corporation of this State, since MSSIC's charter is 1102
statutory, it is amended by the legislature. 1103

The General Assembly may wish to consider whether § 1104
10-104(e) is impractical. The section gives MSSIC the power 1105
to invest in any loan that it buys from a member only if the 1106
loan is "secured by a first mortgage on otherwise
unencumbered fee simple real or improved leasehold property 1107
in this State", and may be too restrictive in light of the 1108
reality that very little real property is today "otherwise 1109
unencumbered". 1110

In § 10-109(c)(2)(ii), a gap exists in the present 1111
statute. The subsection provides that a director of the 1112
Corporation ceases to be a member when for any reason there 1113
is a violation of the statutory qualification that not more 1114
than 3 directors may be directors or officers of
associations that are insured by the Federal Savings and 1115
Loan Insurance Corporation. The section does not provide 1116
the manner of determining which directorship terminates in 1117
the instance when the same occurence affects more than one
director. For example, an association that becomes 1118
federally insured may be served by three directors of MSSIC, 1119
but the statute would require that only two directorships 1120
terminate. 1121

The General Assembly may wish to correct an apparent 1122
oversight in § 10-109(d), which does not provide that the 1123
terms of the three directors appointed by the Governor are 1124
staggered. 1125

In Title 10, the term "free share account" is used to 1126
mean the accounts in its member associations. The General 1127
Assembly may wish to modernize the term by substituting 1128
"savings account" or, if appropriate, "capital stock". The 1129
term "savings account" includes the type of account that is
simply a savings deposit account that has a contractual 1130
relationship to a savings and loan association rather than a 1131
"share" interest. The following sections use the term "free 1132
share" or "share": § 10-103, which provides that a purpose 1133
of the Corporation is to insure "free-share accounts" of 1134
members; § 10-104(e), which provides that the Corporation
may invest in "share accounts" of members; § 10-105, which 1135

sets a limit on the amount of loss to be protected against 1136
for each separate "share account"; § 10-106(b), which 1137
provides that before an association may be insured, the
Division Director must certify the insurability of its 1138
free-share accounts; and § 10-114, which excepts the owners 1139
of "free share accounts" in member associations from the 1140
State insurance laws. 1141

Section 10-111, which relates to bylaws, rules, and 1142
regulations, presents an ambiguity as to amendments to 1143
bylaws. Maryland General Corporation Law grants to 1144
stockholders or members the power to amend bylaws after the
initial organization meeting, except to the extent that a 1145
corporation's charter or bylaws vest that power in the board 1146
of directors. Title 10, MSSIC's charter, contains no 1147
express provisions related to amendments to the bylaws, 1148
other than the power to amend, as included by implication
under Maryland General Corporation Law. 1150

Section 10-112 permits MSSIC to exchange information 1151
with the Division Director as an exception to the provision 1152
in Title 8 that requires the Division Director to keep 1153
information about associations confidential. Title 10, 1154
however, has no similar provision that requires
confidentiality of information held by MSSIC. 1156

The General Assembly may wish to consider whether § 1157
10-113 may be too narrow. It provides that the 1158
Corporation's earnings must be retained, but permits payment 1159
of interest to members for deposits, loans, or advances to
the central reserve fund. The General Assembly may wish to 1160
broaden this section to allow the Corporation to pay 1161
interest on any loans or advances to the Corporation by its 1162
members, whether made to the central reserve fund or the
central insurance fund. 1163

F. Title 11. Consumer Credit. 1165

1. In general. 1167

This title contains provisions dealing with the 1168
creation and operation of the office of the Commissioner of 1169
Consumer Credit. 1170

This title also contains the licensing provisions as to 1171
consumer loans, installment loans, and sales finance 1172
companies. 1173

2. Subtitle 1. Commissioner of Consumer Credit. 1175

This subtitle contains specific provisions for the 1176
appointment, qualifications, and compensation of the 1177
Commissioner of Consumer Credit and general authority for 1178

additional staff. 1179

As to § 11-106, note that the provisions for possible 1180
termination of the office of the Commissioner do not include 1181
Subtitles 2 through 4 of this title or Title 12 of the 1182
Commercial Law Article, as it relates to consumer credit. 1183

Obsolete provisions relating to the Commissioner of 1184
Small Loans and Administrator of Loan Laws are deleted. 1186

3. Subtitle 2. Consumer Loans -- Licensing 1187
Provisions. 1188

In § 11-201(d), the definition of "loan" repeats the 1189
definition appearing in the Maryland Consumer Loan Laws. 1191

Section 11-205 is restructured to require the applicant 1192
to satisfy the Commissioner that the applicant qualifies for 1193
licensing. 1194

The Commission notes that these qualifications do not 1195
reflect that an applicant may be a corporation or other 1196
entity. 1197

Under § 11-206(b)(2), a license fee is set by the date 1198
of application, not of issuance of the license. 1200

Section 11-207(d)(1)(iii) is added to provide for the 1201
return of bond if a license application is denied. 1203

Section 11-208(c) expressly enables the Commissioner to 1204
issue more than one license to a person. 1206

Section 11-209(b) requires a license renewal applicant 1207
to be entitled to be licensed, in addition to the currently 1208
stated requirements. 1209

Under § 11-211(b), a licensee notifies the Commissioner 1210
of a proposed change of address and receives an attachment 1211
for the license, rather than returning the license. 1213

As to § 11-214, the Commission notes that the language 1214
may be overly broad with respect to the investigatory power 1215
of the Commissioner. Provision for enforcement against a 1216
person who is not a licensee are not included here. Section 1217
11-222 contains the penalty provision only for failure to be 1218
licensed and does not extend to the numerous other
provisions of the subtitle. 1219

The Commission is unsure as to the applicability of the 1220
Administrative Procedure Act to a denial of an application 1221
for licensing. Unlike the provisions as to suspensions and 1222
revocations of licenses, which require an opportunity for a 1223

hearing and, therefore, is a "contested case" within that Act, this section is silent as to hearings. At the same time, the provision for judicial review refers to the "record of proceedings".

4. Subtitle 3. Installment Loans -- Licensing Provisions.

As to the exemption for loans between relatives, in § 11-301(a)(1), there is no limit on the degree of consanguinity.

Section 11-303 applies to this subtitle the licensing and investigatory powers of Subtitle 2 of this title. The Commission notes that many of the Subtitle 2 provisions do not seem to apply and suggests consideration of provisions that specifically apply to a license issued under this subtitle.

5. Subtitle 4. Sales Finance Companies -- Licensing Provisions.

Several of the definitions in § 11-401 are revised to conform to the definitions of the Retail Installment Sales Act in CL § 12-601.

In particular, in § 11-401(f), the "cash price of $12,500 or less" is substituted for the $5,000 limit in present Art. 83, § 164(e). It appears to be only an oversight that this provision was not amended by Ch. 77, Acts of 1976, which amended the Retail Installment Sales Act.

The definition of "installment sale agreement" is revised to include "a prospective installment sale agreement", "a purchase money security agreement" and to exclude C.O.D. transactions and a layaway agreement.

The Commission notes that the broad definition of a "sales finance company" is not reflected throughout the balance of this subtitle. For example, the penalty provisions do not mention transactions as to retail credit accounts and home improvement accounts.

In §§ 11-405(3) and 11-414(a)(1)(i), the broader term "agreements" is substituted for the reference to "installment sales contracts", and "installment sales agreements" to cover renewals, extensions, and refund agreements.

The Commission notes that, under § 11-405, a minor or adjudicated incompetent is not excluded from licensing.

In § 11-406(b), an offer or solicitation is sufficient for a violation. 1263 1264

Section 11-407(c)(1)(iii) clarifies that the extraordinary charges are kept even if the license application is denied. 1265 1266 1267

Section 11-409(b), which enables application for a new license before the old license expires, also appears to require payment of an investigation fee and meeting all requirements for licensing. 1268 1269 1270 1271

Section 11-411 is revised to allow for attachment of a consent to a change of address, rather than return of the license for correction. 1272 1273 1274

Section 11-414(b) follows the practice of the Commissioner as to suspension or revocation of licenses. 1275 1277

As to § 11-415, the Commission notes that the extent to which the Administrative Procedure Act applies to a denial of a license application is unclear. This section provides for judicial review of a denial and of a suspension or revocation. The latter instances would be contested cases within the meaning of the Administrative Procedure Act. 1278 1279 1280 1281 1283

G. Title 12. Miscellaneous Institutions and Activities. 1284 1285

1. Subtitle 1. Bank Services and Bank Service Corporations. 1286 1287

Present Art. 11, § 62A(a) refers to "two or more, each of which owns a part of the capital stock of {a bank service corporation}." This reference appears as a substantive requirement in § 12-103 and is restated to clarify that all of the capital stock need not be owned by banks. 1288 1289 1290 1291 1292

The Commission points out the ambiguity of the phrase "reasonable cost of this capital provided to the corporation by its stockholders" in § 12-106(b)(2). 1293 1294 1295

Also in § 12-106(d)(2), the General Assembly may wish to consider whether this burden should extend to § 12-106(c)(2) as to the "practical capacity of the corporation". 1296 1297 1298 1299

2. Subtitle 2. Foreign Banks. 1301

As to § 12-201(d) and the definition of "foreign bank", the present law indicates that it applies throughout present Art. 11, § 31A. There is no definition for the present 1302 1303 1304

references to "foreign banking corporation". Although the Commission has substituted the defined term "foreign bank" for the references to "foreign banking corporations" in present Art. 11, §§ 31A(a) and 32, the Commission notes that the General Assembly may have been referring to different entities. The definition suggested by the Bank Commissioner appears in the revisor's note to § 12-201.

In § 12-207(b), the prohibition extends to "electronic terminals" s the apparent intent.

Section 12-210, as to renewals, conforms to similar provision elsewhere in this article.

3. Subtitle 3. Secondary Mortgage Loans -- Licensing Provisions.

The definitions in § 12-301(c) and (f) are revised to conform to the definitions in the Maryland Secondary Mortgage Loan Law -- Credit Provisions in CL § 12-401.

The Commission notes the loans excluded from the term "secondary mortgage loan" in § 12-301(f)(2) appear similar to the "commercial loan" defined in CL § 12-101(c) and the "commercial loan" and corporate loan described in CL § 12-103(e). If similar loans were intended, clarifying amendments may be appropriate.

Section 12-302 is revised to clarify that the enumerated persons are exempted from licensing, but are still subject to the other provisions of the Maryland Secondary Mortgage Loan Law.

As to qualifying for licensing under § 12-305(a), the Commission notes that the qualifications do not reflect that the applicant may be a corporation.

As noted, provisions for licensing are standardized to the extent possible without effecting substantive provisions. Thus, § 12-306(b)(2) provides that the license fee, which is submitted with the application, is determined by the date of that application, rather than the date on which the license is issued.

Section 12-306(c)(3)(ii) provides for a bond "with sureties that the Bank Commissioner approves".

Provision for the return of the bond and license fee in the event of denial of the license application is added in § 12-307.

Section 12-307(a) is revised to require investigation as to all of the applicant's qualifications, rather than the

present limited reference to the qualifications in § 12-305(a)(2). 1348 1349

As revised, §§ 12-307 and 12-317 satisfy the notice requirement of the Administrative Procedure Act. 1350 1352

Section 12-309(b) expressly provides for renewal of a license. 1353 1354

Under § 12-314, the Bank Commissioner is able to examine licensees and other persons who may be in violation of this subtitle. 1355 1356 1357

A licensee must pay a per diem for this investigation. The Bank Commissoner suggests that this per diem is not sufficient. 1358 1359 1360

The Commission points out the limited reference to a "lender" in CL § 12-413 and the duplicative present Art. 66, § 69, which, in this revision, is deleted. The General Assembly may wish to extend these civil penalties to other persons who violate provisions of this law. 1361 1362 1363 1365

4. Subtitle 4. Sellers of Money Orders and Traveler's Checks. 1366 1367

This subtitle is derived from the present "Currency Exchange Law". That short title has been deleted as nondescriptive of the scope of these provisions. 1368 1369 1370

Section 12-402 is revised to clarify that these persons are exempted from the licensing provisions, but not the other provisions of this subtitle. 1371 1372 1373

Section 12-404(a) clarifies that an agency must exist for drafts to be sold under a licensee's name. 1374 1376

The Commission points out that the meaning of the present law from which § 12-406(a)(2)(ii) and (iii) is derived is not entirely clear. 1377 1378 1379

Section 12-406(b) and (c) requires submission of the fees and bonds or securities with the application, to conform to other licensing provisions in this article. Note that a separate application, including license fee is required for each license. Separate investigation fees are not required. One bond or set of securities is sufficient, but the amount varies. 1380 1381 1382 1383 1384 1385

Again, provisions are added to provide for return of the bond or securities and fees if the application is denied. 1386 1387 1388

In § 12-409(b), the requirement for an application for renewal is stated expressly. Fees are to accompany the application. 1389 1390 1391

Section 12-410(b) allows for a bond "with sureties that the Bank Commissioner approves" for conformity to other bond provisions. 1392 1393 1394

Section 12-410(c)(5) enables a licensee to receive interest or dividends on securities that the Bank Commissioner holds as long as the licensee is "solvent", but does not define solvency. 1395 1396 1397 1398

For simplicity and conformity, consent to a change of address is sent to the licensee for attachment to the license, under § 12-412. 1399 1400 1401

Present law authorizes revocation of a license but is silent as to the grounds. 1402 1403

In § 12-420, the Commission has assumed that the grounds for revocation would include at least those grounds for criminal prosecution. However, the General Assembly may wish to consider additional grounds. 1404 1405 1406 1407

Express provision for suspension of the license also is added. 1408 1409

Section 12-421, as revised, provides for notice before the hearing, rather than notice before revocation. 1410 1412

In § 12-424, violations are specifically characterized as "misdemeanors". 1413 1414

5. Subtitle 5. Mortgage Bankers and Mortgage Brokers. 1415

This subtitle is revised to provide for the licensing of mortgage bankers and mortgage brokers, rather than annual "registration" of their places of business. The regulatory provisions of the present law conform to other "licensing" provisions. 1417 1418 1419 1420 1421

The Commission points out the requirement in § 12-507 for a public hearing before adoption of the code of conduct. Under the Administrative Procedure Act, a hearing is not mandatory, but the Commission felt that this provision might be intended to require such a hearing. 1422 1423 1424 1425 1426

Section 12-508 is revised to apply only to licensees. 1427

Specific penalties are provided only for acting as a mortgage broker or mortgage banker without a license. 1429 1431

6. Subtitle 6. Safe-deposit companies. 1433

Section 12-601(c) and the balance of the subtitle, as 1434
revised, clarify that safe-deposit companies need not be 1435
corporate entities. 1436

H. Title 13. State Operated Financial Programs. 1438

1. In general. 1440

This title contains the provisions for the Maryland 1441
Industrial Development Financing Authority, the Maryland 1442
Small Business Development Financing Authority, and the 1443
Maryland Home Financing Programs. 1444

Each of these entities and programs function within the 1445
Department of Economic and Community Development. 1447

2. Subtitle 1. Maryland Industrial Development 1448
Financing Authority. 1449

This subtitle deals with the creation and operation of 1450
the Maryland Industrial Development Financing Authority. 1451
The Authority approves mortgage loans for industrial 1452
projects and, subject to the limitations of the subtitle, 1453
may approve and insure these mortgage loans. 1454

The power to approve mortgage loans that were not to be 1455
insured by the Authority was added by Ch. 667, Acts of 1976 1456
-- but not indicated uniformly in the present law. The 1457
revision of this subtitle substitutes references to 1458
approval, rather than approval for insurance, as
appropriate. See, e.g., § 13-112. 1459

Throughout this subtitle, the chief administrative 1460
officer is referred to as the "executive director", rather 1461
than manager to conform to practice. 1462

The Commission notes that the scope of § 13-112, as to 1463
conflicts of interests, is unclear and does not specify the 1464
office of a violation. 1465

In § 13-132(f), as to a construction mortgage, the 1466
mortgagor is not required to have a commitment for permanent 1467
financing when the application is submitted. The Commission 1468
notes this requirement created a procedural burden that is
unnecessary since the commitment must be obtained before 1469
approval may be granted. 1470

The Commission points out that, as to § 13-136, the 1471
provisions do not include procedures for making the 1472
determination about the unemployment rate, but requires 1473
actions based on this determination. 1474

In § 13-140(a)(3), the defined term "public body" is used, as the apparent intent.

The Commission notes that, if exclusion of an industrial project from the Little Miller Act was intended under § 13-142, clarifying language may be appropriate.

Section 13-151 is revised to refer to a "public body" in accordance with the intent of Ch. 496, Acts of 1979, which, because of a title defect, was not accomplished.

The Authority has indicated that to the extent that Ch. 496, Acts of 1979 precludes an applicant from acting as mortgagee without participation of a public body, the effect was unintended.

The Commission asks whether § 13-152(a)(1)(i), which seems to preclude lump sum payments, is unduly restrictive.

Section 13-153(a)(2) is revised to clarify that only insured mortgage payments are intended to be "lawful investments".

Ch. 496, Acts of 1979, also intended apparently to permit approval of uninsured loans that are not mortgage loans. As the title of that Act is silent about this change, this subtitle, as revised, continues to refer to mortgage loans.

3. Subtitle 2. Maryland Small Business Development Financing Authority (MSBIDFA).

This subtitle, which is derived from Art. 41, §§ 266HH-1 -- 266HH-12, is patterned organizationally after Title 13, Subtitle 1, Maryland Industrial Development Financing Authority (MIDFA). In regard to this subtitle, there is little practice to refer to, since the Authority is in the initial stages of existence, having been established by the General Assembly in 1978. In general, the purpose of MSBIDFA is to provide financial assistance to be used primarily for working capital necessary to perform government contracts by socially or economically disadvantaged businessmen.

In § 13-201, which contains the definitions for the subtitle, note that the definition of "eligible applicant", "social or economic disadvantaged" {sic}, and "good character" now appear in § 13-231 of this subtitle since these definitions reflect substantive requirements for qualifying for financial assistance.

In § 13-206, as to membership, the reference to the ex officio members having "all of the powers of a director" is

deleted as unnecessary since, absent express provisions limiting their authority, ex officio members are full members.

In § 13-208, the chief administrative officer is referred to as the executive director -- the title that the Authority has adopted.

Also in § 13-208(b) on the executive director, the removal of the executive director is stated to be with the concurrence of the Secretary of Economic and Community Development, even though the executive director serves at the pleasure of the Authority.

In § 13-210 on conflicts of interest, the General Assembly may wish to note that this section does not specify what constitutes a conflict of interest nor does it specify the effect of a violation of the provision.

Note that Part IV of this subtitle differentiates between an applicant who is an individual who applies for financial assistance, and a corporate applicant. In this regard, see § 13-227(2), which restricts corporations to applying for a guarantee of an equity investment, whereas an applicant may seek a guarantee of a loan, or as a last resort, a direct loan from the Authority.

In § 13-231(b), the term "Authority" is substituted for the reference to the approval by the "Department", which appears to be an erroneous reference, since applications for financial assistance are made to the Authority.

4. Subtitle 3. Home Financing Program.

This subtitle covers the Home Financing Program. This program is managed by the Department of Economic and Community Development and makes loans at a preferred interest rate to help disadvantaged person buy homes.

I. Amendments to other Articles of the Code.

The Commission proposes the transfer to other articles of the Code certain provisions that do not apply solely to or are unrelated to financial institutions.

As noted, present Art. 13 provisions do not relate only to bank holidays. New Art. 1, § 27 would define "legal holiday" for purposes of the Code and provide for observance.

Amended Art. 10, § 33 would include present Art. 11, § 88A, as to advertisements by corporate fiduciaries and apply a uniform penalty.

New Art. 41, § 15B-2 would specify the power of the Governor to act in an emergency, which power affects entities other than banking institutions.

New Art. 41, § 79B would provide for dedication of April 13 to John Hanson.

Amended Art. 56, § 230A would include present Art. 11, § 108H, as to blockbusting activites of "any person" and apply a uniform penalty.

New Art. 81, § 128B would place the franchise tax as to savings and loan within the subtitle as to the franchise tax on financial institutions, generally.

Amended ET §§ 5-105, 6-102, and 13-206 would clarify that only an authorized corporation such as a trust company may be a personal representative or guardian. Section 13-206(c)(2) also would include the power of the court to order deposits to be made with a trust company that is guardian.

New Art. 1, § 25(h) would provide for citation of this Financial Institutions Article.

Amendments to Art. 41, § 221A(a) would make the list of units within the Department of Licensing and Regulation current.

The amendments to several definitions in the Commercial Law Article would conform these definitions to their counterparts in the Financial Institutions Article.

As to CL §§ 12-313 and 12-314, the Commission queries their joint application.

The Commission also points out the language "clerical error or mistake".

Respectfully submitted,

William S. James

William S. James
Chairman

Geoffrey D. Cant

Geoffrey D. Cant
Director

## CHANGES TO REVISOR'S NOTES

The following changes and corrections in Revisor's Notes will be requested for incorporation in the "third reader" printing of House Bill 1.

(1) Page 42, Revisor's Note to § 3-206(a). In line 2409, the cross reference to "§ 1-102" should read "§ 1-201".

(2) Page 115. Lines 6230 through 6245, inclusive, should appear in capital letters.

(3) Page 128, Revisor's Note to § 4-206. In the unnumbered line following line 6950, the word "title" should appear instead of the word "subtitle".

(4) Page 129, Revisor's Note to § 4-206. In line 6989, the word "title" should appear instead of the word "subtitle".

(5) Page 170, Revisor's Note to § 5-502. In line 9164, the comma with the quotation mark should be stricken, and a comma added after the end quotation mark.

(6) Page 172, Revisor's Note to § 5-503. In the unnumbered line following line 9244, the word "See" should appear instead of the abbreviation "Cf."

(7) Page 174, Revisor's Note to § 5-504. In the unnumbered line following line 9348, the word "See" should appear instead of the abbreviation "Cf.".

(8) Page 187, Revisor's Note to § 5-611. In line 10040, the word "title" should appear instead of the word "article".

(9) Page 201, Revisor's Note to § 5-804. In line 10768, insert after "§ 1-101" the words "of this article".

(10) Page 248, Revisor's Note to § 6-702. In line 13304, delete "unnecesary" and substitute "unnecessary".

(11) Page 460, Revisor's Note to § 12-103. In the unnumbered line following line 24846, delete the word "unnecesary" and substitute "unnecessary".