DUTY IMPOSED ON THE CORPORATION BY THIS SECTION.

(2) IN AN ACTION BROUGHT UNDER THIS SUBSECTION, A BANK SERVICE CORPORATION THAT CLAIMS THE BENEFIT OF THE EXCEPTION PROVIDED BY SUBSECTION (C)(1) OF THIS SECTION HAS THE BURDEN OF PROVING THAT THESE COMPARABLE BANK SERVICES ARE AVAILABLE TO THE APPLICANT.

REVISOR'S NOTE. This section is new language derived without substantive change from Art. 11, § 62A(c).

In the introductory clause of subsection (a) of this section, the term "banking institution", which is defined in § 1-101 of this article, is substituted for the reference to "a bank ... subject to examination by the Commissioner".

Subsection (d)(1) of this section is added to state expressly what now only is implied by the present reference to "any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof": i.e., that a banking institution may bring an action for a mandatory injunction or for damages under this section.

In subsection (b)(2) of this section, the present reference to "reasonable cost of the capital provided to the corporation by its stockholders" is retained. The Commission to Revise the Annotated Code notes that this provision may refer to (1) a reasonable return for the capital investment or (2) compensation of the stockholders for the cost of the capital invested. The General Assembly may wish to clarify this provision.

As to subsection (d)(2) of this section, present Art. 11, § 62A(c) provides that "the burden shall be upon the bank service corporation to show such availability", apparently referring to what is now subsection (c)(1) of this section; the revision reflects this limited reference. However, the General Assembly might consider whether the intent was not to place the same burden on a bank service corporation that claims the benefit of the alternative exception provided by subsection (c)(2) of this section, the facts relative to which are uniquely within its knowledge.

GENERAL REVISOR'S NOTE:

As to the possible termination of the powers and duties of the Bank Commissioner under this subtitle, see § 2-401 of this article.