

BANK CONSERVATION ACT

[Chapter 1 of the 73rd Congress; 48 Stat. 2]

[As Amended Through P.L. 109–356, Enacted October 16, 2006]

【Currency: This publication is a compilation of Chapter 1 of the 73rd Congress. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

SEC. 201. 【12 U.S.C. 201】 This title may be cited as the “Bank Conservation Act.”

SEC. 202. 【12 U.S.C. 202】 As used in this title, the term “bank” means any national banking association or any other financial institution chartered or licensed under Federal law and subject to the supervision of the Comptroller of the Currency; the term “voluntary dissolution and liquidation” means a transaction pursuant to section 5220 of the Revised Statutes that involves the assumption of the bank’s insured deposit liabilities and the sale of the bank, or of control of the bank, as a going concern; and the term “State” means any State, Territory, or possession of the United States, and the Canal Zone.

SEC. 203. 【12 U.S.C. 203】 APPOINTMENT OF CONSERVATOR.

(a) APPOINTMENT.—The Comptroller of the Currency may, without prior notice or hearings, appoint a conservator (which may be the Federal Deposit Insurance Corporation) to the¹ possession and control of a bank whenever the Comptroller of the Currency determines that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exist.

(b) JUDICIAL REVIEW.—

(1) IN GENERAL.—Not later than 20 days after the initial appointment of a conservator pursuant to this section, the bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller to terminate the appointment of the conservator, and the court, upon the merits, shall dismiss such action or shall direct the Comptroller to terminate the appointment of such conservator. The Comptroller’s decision to appoint a conservator pursuant to this section shall be set aside only if the court finds that

¹ So in law. Probably should be “take”.

such decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) **STAY.**—The conservator may request that any judicial action or proceeding to which the conservator or the bank is or may become a party be stayed for a period of up to 45 days after the appointment of the conservator. Upon petition, the court shall grant such stay as to all parties.

(3) **ACTIONS AND ORDERS.**—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator, or restrain, or affect the exercise of powers or functions of a conservator. A court, upon application by the Comptroller, shall have jurisdiction to enforce an order of the Comptroller relating to—

(A) the conservatorship and the bank in conservatorship, or

(B) restraining or affecting the exercise of powers or functions of a conservator.

(c) **ADDITIONAL GROUNDS FOR APPOINTMENT.**—In addition to the foregoing provisions, the Comptroller may appoint a conservator for a bank if—

(1) the bank, by an affirmative vote of a majority of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment, or

(2) the Federal Deposit Insurance Corporation terminates the bank's status as an insured bank.

The appointment of a conservator pursuant to this subsection shall not be subject to review.

(d) **EXCLUSIVE AUTHORITY.**—The Comptroller shall have exclusive power and jurisdiction to appoint a conservator for a bank. Whenever the Comptroller appoints a conservator for any bank, the Comptroller may appoint the Federal Deposit Insurance Corporation conservator for such bank. The Federal Deposit Insurance Corporation, as such conservator, shall have all the powers granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators of banks under this Act and any other provision of law. The Comptroller may also appoint another person as conservator, who shall be subject to the provisions of this Act.

(e) **REPLACEMENT OF CONSERVATOR.**—The Comptroller may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the bank's right under subsection (b) to obtain judicial review of the Comptroller's original decision to appoint a conservator.

SEC. 204. [12 U.S.C. 204] EXAMINATIONS.

The Comptroller of the Currency (in consultation with the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation is appointed conservator) is authorized to examine and supervise the bank in conservatorship as long as the bank continues to operate as a going concern. The Comptroller may use reports and other information provided by the Federal Deposit Insurance Corporation for this purpose.

SEC. 205. [12 U.S.C. 205] TERMINATION OF CONSERVATORSHIP.

(a) **GENERAL RULE.**—At any time the Comptroller becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller (with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation has been appointed conservator) may—

(1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or

(2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation of the involved bank.

(b) **OTHER GROUNDS FOR TERMINATION.**—The Comptroller also may terminate the conservatorship upon the appointment of a receiver pursuant to the first section of the Act of June 30, 1876 (12 U.S.C. 191).

(c) **ENFORCEMENT UNDER FEDERAL DEPOSIT INSURANCE ACT.**—Such terms, conditions, and limitations as may be prescribed under subsection (a)(1) shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act, to the same extent as an order issued pursuant to section 8(b) of the Federal Deposit Insurance Act which has become final. The bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located or in the United States District Court for the District of Columbia for an order requiring the Comptroller to terminate the order. An action for judicial review of the terms, conditions, and limitations may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

(d) **ACTION UPON TERMINATION.**—

(1) **IN GENERAL.**—Upon termination of the conservatorship under subsection (a)(2), the Federal Deposit Insurance Corporation, as conservator, or when another person is appointed conservator, such other person, shall conclude the affairs of the conservatorship in accordance with paragraph (2).

(2)² **DEPOSIT AND DISTRIBUTION OF PROCEEDS.**—(A) Within 180 days of the sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation, the conservator shall deposit all net proceeds received from the transaction, less any outstanding expenses of the conservatorship, with the United States district court for the judicial district in which the home office of such bank is located and shall cause notice to be published for three consecutive months and notify by mail all known and remaining creditors and shareholders. Within 60 days thereafter, any depositor, creditor, or other claimant of the bank, or any shareholder of the bank may bring an action in interpleader in that court for distribution of the proceeds. The district court shall distribute such funds equitably. If no such action is instituted within one year after the date the funds are deposited with the district court, title to such net proceeds shall revert to the United

²Indentation so in law

States and the district court shall remit the funds to the Treasury of the United States.

(B) The conservator shall be deemed to have discharged all responsibility of the conservatorship upon the deposit of the proceeds with the district court and giving the required notifications.

SEC. 206. [12 U.S.C. 206] CONSERVATOR; POWERS AND DUTIES.

(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the bank and may operate the bank in its own name unless the Comptroller in the order of appointment limits the conservator's authority.

(b) SUBJECT TO RULES OF COMPTROLLER.—The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this Act, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of a national bank.

(c) PAYMENT OF DEPOSITORS AND CREDITORS.—The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for that purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

(d) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Comptroller determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) EXPENSES.—All expenses of any such conservatorship shall be paid by the bank and shall be a lien upon the bank which shall be prior to any other lien.

【§ 207 and § 208 repealed by section 808 of P.L. 101-73 (103 Stat. 446).】

SEC. 209. [12 U.S.C. 209] LIABILITY PROTECTION.

(a) FEDERAL AGENCY AND EMPLOYEES.—In any case in which the conservator is a Federal agency or an employee of the Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

(c) INDEMNIFICATION.—The Comptroller shall have authority to indemnify the conservator on such terms as the Comptroller deems proper.

SEC. 210. [12 U.S.C. 210] Nothing in this title shall be construed to impair in any manner any powers of the President, the Secretary of the Treasury, the Comptroller of the Currency, or the Federal Reserve Board³.

SEC. 211. [12 U.S.C. 211] RULES AND REGULATIONS.

(a) IN GENERAL.—The Comptroller of the Currency may prescribe such rules and regulations as the Comptroller may deem necessary to carry out the provisions of this Act.

(b) F.D.I.C. AS CONSERVATOR.—In any case in which the Federal Deposit Insurance Corporation is the conservator, any rules or regulations prescribed by the Comptroller shall be consistent with any rules and regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

³Since the date of the enactment of the Banking Act of 1935, the Federal Reserve Board has been known as the Board of Governors of the Federal Reserve System (see section 203(a) of such Act, 49 Stat. 704).