

IC 28-6.1-15

Chapter 15. Conversion of a Savings Bank to a Bank or Trust

IC 28-6.1-15-1

Application of chapter

Sec. 1. This chapter applies only to a savings bank organized, reorganized, or operating under IC 28-6 (before its repeal) before January 1, 1993.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-2

Effective date of conversion

Sec. 2. As used in this chapter, "effective date of conversion" refers to the date that the savings bank has complied with section 9 of this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-3

Conversion permitted

Sec. 3. A savings bank may convert into a state bank or trust company under this chapter.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-4

Resolutions of conversion

Sec. 4. (a) A conversion of a savings bank under this chapter must be proposed by the board of the savings bank by a resolution of conversion adopted by the affirmative vote of at least two-thirds (2/3) of the then qualified and acting trustees.

(b) The resolution of conversion must include the following information:

(1) The proposed articles of incorporation of the bank or trust company. The proposed articles of incorporation shall:

(A) insofar as applicable, conform with the provisions of IC 28-12-2; and

(B) set forth the following:

(i) The plan of conversion.

(ii) The manner in which the shares of the capital stock of the proposed bank or trust company will be subscribed for.

The provisions of IC 28-12-11, IC 28-13-1, IC 28-13-2, and IC 28-13-3 are applicable with respect to the capital requirements and the par value and incidents of shares of capital stock of the proposed bank or trust company.

(2) The proposed capital stock and surplus.

(3) The proposed bylaws.

(4) Other information required by the department.

(c) The savings bank must submit to the department three (3) copies of the resolution of conversion, including the proposed articles of incorporation, certified by the president and attested by the secretary of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-5

Terms and conditions of conversions; rights of depositors

Sec. 5. The terms and conditions of conversion and the rights of the depositors under the conversion are as follows:

(1) A depositor may subscribe to the capital stock of the bank or trust company:

(A) in an amount equal to part or all of the depositor's pro rata interest in the surplus of the savings bank;

(B) in an additional amount equal to part or all of the depositor's savings deposits in the savings bank; and

(C) in other additional amounts desired by the depositor.

(2) If the aggregate subscriptions received from depositors under subdivision (1) exceed the proposed capital of the bank or trust company:

(A) the proposed capital may be increased to the extent required to eliminate the oversubscription by amending the resolution of conversion and the proposed articles of incorporation of the bank or trust company; or

(B) the subscriptions of the depositors may be ratably reduced to the extent required to eliminate the oversubscription.

(3) If the aggregate subscriptions do not amount to a full subscription to the capital stock of the bank or trust company, the trustees may open the subscription list to the general public in order to eliminate the undersubscription.

(4) Upon conversion, all savings deposits in the savings bank, except those allocated to subscriptions by depositors under subdivision (1)(C):

(A) become savings deposits in the bank or trust company; and

(B) are subject to the withdrawal restrictions applicable to savings deposits in banks or trust companies organized under IC 28-1.

(5) The rights of depositors with respect to their pro rata interests in the surplus of the savings bank are as follows:

(A) Upon conversion, the amount of the depositors' pro rata interests in the surplus of the savings bank that have not been allocated to subscriptions by the depositors under subdivision (1)(A) shall, at the election of those depositors, be paid to the depositors in cash or credited to their savings deposits in the bank or trust company. The pro rata interests of depositors who fail to make an election with respect to the distribution of the interests before the effective date of conversion shall be credited to the savings deposits of the depositors in the bank or trust company.

(B) The value of each depositor's pro rata interest in the surplus of the savings bank shall be computed by multiplying the amount in the surplus, as of the date of the

resolution of conversion, by a percentage determined by dividing the total amount of savings deposits on the date of the resolution of conversion into the amount of each depositor's savings deposits on that date. Each interest shall be increased or decreased by applying the same percentage multiple to the amount of any increase or decrease in the surplus occurring within the period of time between the date of the resolution of conversion and the effective date of conversion. For purposes of this section, each depositor of the savings bank shall be considered a depositor as of the date of the resolution of conversion. Depositors of the savings bank who withdrew all of their deposits before the date of the resolution of conversion have no right or claim to any of the savings bank's surplus.

(C) Subscriptions, payments in cash, or savings deposit credits made under this section constitute satisfaction in full of each depositor's pro rata interest in the surplus of the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-6

Approval or disapproval of resolutions of conversion by department

Sec. 6. (a) The department shall approve or disapprove the resolution of conversion after first making examinations or investigations the department considers necessary to determine if the proposed conversion is fair and in the best interests of the depositors of the savings bank.

(b) IC 28-1-2-23 and IC 28-11-5 do not apply to a determination under subsection (a).

(c) If the department approves the resolution of conversion, the approval shall be evidenced in the manner prescribed in IC 28-12-5. The approval shall be indicated on the resolution.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-7

Notice to depositors; objections; judicial review

Sec. 7. (a) After the department has given approval to the resolution of conversion and has returned the resolution of conversion to the savings bank, the savings bank shall give notice of the proposed conversion, by mail, to each depositor of record as of the date of the resolution of conversion. Notice to a depositor shall be sent to the address of the depositor as shown by the records of the savings bank. Notice shall also be given by at least ten (10) consecutive days of publication in a newspaper of general circulation published in the county in which the savings bank is located.

(b) After notice has been given under this section, a copy of the resolution of conversion shall be submitted to the circuit court with jurisdiction in the county in which the savings bank is located.

(c) A depositor of the savings bank aggrieved by the proposed

conversion may, not more than twenty (20) days after submission of the resolution of conversion with the court file in the court a verified statement of objection to the proposed conversion. The matter shall be docketed upon the books of the court, and entitled "In the Matter of the Conversion of _____ Savings Bank to _____" (inserting the names of the savings bank and the successor bank or trust company). The nature of an objection to the conversion is limited to the unfairness of the proposed conversion relative to the rights and interests of the objecting depositor. Without filing pleadings, the savings bank shall be considered to deny the objections.

(d) After the twenty (20) day period for filing objections has expired, the court shall proceed as soon as possible to hear the evidence and determine the fairness of the proposed conversion relative to the individual rights and interests of all objecting depositors. The objecting depositors have the burden of proof.

(e) If the court finds that the proposed conversion is fair with respect to the rights and interests of the objecting depositors, the court shall enter an order:

- (1) approving the conversion, subject only to the approval by the secretary of state of the articles of incorporation of the proposed bank or trust company; and
- (2) assessing the costs of the proceeding against the objectors.

(f) If the court finds that the proposed conversion is not fair with respect to the rights and interests of the objecting depositors, the court shall enter an order:

- (1) enjoining the conversion; and
- (2) assessing the costs of the proceeding against the savings bank.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-8

Approval of articles of incorporation by secretary of state

Sec. 8. (a) If the conversion is approved under section 7 of this chapter and if the capital stock of the bank or trust company has been fully subscribed, the trustees of the savings bank shall submit three (3) copies of the articles of incorporation of the bank or trust company with the department's approval indicated on the articles to the secretary of state.

(b) If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, after all fees have been paid as required by law:

- (1) indicate approval on the articles;
- (2) keep one (1) copy of the articles for filing; and
- (3) send the trustees a certificate of incorporation and two (2) copies of the articles of incorporation bearing the indicated approval of the secretary of state.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-9

Prerequisites to doing business

Sec. 9. (a) Except as is incidental to its conversion or to obtaining payment for shares of its capital stock, the bank or trust company may not exercise any new power, right, or authority conferred by its conversion, transact any business, or incur any indebtedness, until both of the following occur:

(1) One (1) of the copies of the articles of incorporation with the indicated approval of the secretary of state has been filed with the county recorder of the county in which the principal office of the bank or trust company is located.

(2) The amount of the capital stock of the bank or trust company has been fully paid in.

(b) If the bank or trust company violates this section, its officers and directors are severally liable for any debts or liabilities of the bank or trust company arising from the violation.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-10**Effect of conversions**

Sec. 10. (a) On the effective date of conversion, the existence of the savings bank ceases and the existence of the bank or trust company begins.

(b) On the effective date of conversion, the following apply:

(1) All subscriptions to shares of the capital stock of the bank or trust company previously received are considered accepted by the bank or trust company, and the subscribers for those shares, or their assigns, are considered to be shareholders of the bank or trust company.

(2) All property, all debts due on whatever account, all choses in action, and every other interest of or belonging to the converted savings bank are considered transferred to and vested in the bank or trust company without further act or deed.

(3) The bank or trust company shall be responsible and liable for the liabilities and obligations of the converted savings bank. An existing claim, an action, or a proceeding pending by or against the converted savings bank may be prosecuted to judgment as if conversion had not taken place or the bank or trust company may be substituted in the savings bank's place.

(4) The new bank or trust company has all the rights, privileges, immunities, and powers and, except as provided in this chapter, is subject to all the duties, restrictions, penalties, and liabilities of a bank or trust company organized under IC 28-1.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-11**Continued service of boards**

Sec. 11. The board of the savings bank shall serve as the board of directors of the bank or trust company until the first annual meeting of the shareholders.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-12**Conformation to limitations**

Sec. 12. (a) Subject to subsection (b), a bank or trust company formed under this chapter shall, within three (3) years from its date of conversion, conform to the limitations prescribed by IC 28-1-13.

(b) The department may extend the time for the new bank or trust company to conform to the limitations prescribed by IC 28-1-13 if the interest of the depositors will be protected and served by an extension.

As added by P.L.42-1993, SEC.72.

IC 28-6.1-15-13**Powers and duties of department**

Sec. 13. This chapter does not limit the powers or duties of the department under IC 28-1.

As added by P.L.42-1993, SEC.72.