



Ohio Revised Code Section 1121.52 Impaired capital.

Effective: January 1, 1997

Legislation: House Bill 538 - 121st General Assembly

(A) The capital of a bank is impaired when the deficit in the undivided profits account exceeds the surplus account so that the sum of the paid-in capital account, the surplus account, and the undivided profits account is less than the sum of the products of the number of shares outstanding in each class multiplied by the respective par value of shares of each class.

(B) When the capital of a bank is impaired, the superintendent of financial institutions shall give notice to the bank's board of directors of both of the following:

- (1) The fact of impairment;
- (2) The amount of cash required to be paid in to the bank's capital to cure the impairment.

(C) Within ten days after receiving the superintendent's notice pursuant to division (B) of this section, or within the time otherwise provided in the superintendent's notice, the bank's board of directors shall do one of the following:

- (1) Assess the shareholders of the bank pro-rata, on the basis of the number of the bank's shares held by each, for the amount required to cure the impairment;
- (2) Execute to the bank a bond, in the amount and with the surety or security approved by the superintendent, providing for cash to be paid in, on or before a date to be fixed in the bond and approved by the superintendent, to ensure that the capital of the bank is not less than that required by the superintendent. If a conservator is appointed for the bank or the bank is closed on or before the date fixed in the bond, the bond may nevertheless be enforced by appropriate action instituted by the superintendent for the benefit of the bank and its depositors and creditors.

(D) If the bank's board of directors elects to assess the bank's shareholders pursuant to division (C)(1) of this section, the bank's board of directors shall give notice to each of the bank's



shareholders as follows:

(1) The notice of assessment shall include both of the following:

(a) The amount assessed upon the shareholder;

(b) Notice that if the amount assessed is not paid in full and in cash within thirty days after receipt of the notice, a sufficient amount of the shareholder's shares will be sold in accordance with division (E) of this section.

(2) The notice to shareholders shall be given in person or by registered mail and is deemed received by the shareholder upon delivery in person to the shareholder of record or upon the date of placing the notice in the mail by registered mail to the name and address of the shareholder as on the books and records of the bank.

(3) Any person receiving notice of an assessment in accordance with division (D) of this section who is not the beneficial owner of the shares being assessed shall forward the notice immediately upon receipt to any subsequent transferee or other beneficial owner of the shares.

(E) If, after receiving notice of an assessment pursuant to division (D) of this section, a shareholder neglects or refuses to pay the assessment in full and in cash within thirty days or any longer time the superintendent may permit, the bank's board of directors shall sell a sufficient amount of the shareholder's shares at either a public or private sale, to make good the deficiency in the shareholder's assessment plus the costs of sale, and pay to the shareholder any balance remaining from the sale. The sale of a shareholder's shares pursuant to this division effects an absolute cancellation of any outstanding certificate evidencing those shares, and the bank shall issue a new certificate to the purchaser of the shares. Upon surrender of the certificates evidencing the shares sold, the bank shall issue a new certificate to the shareholder for any shares remaining in the shareholder's name.

(F) If, within sixty days after receiving the superintendent's notice pursuant to division (B) of this section, the capital of the bank is not increased to the amount required by the superintendent in the notice, the superintendent may immediately appoint a conservator for the bank and take any other



action authorized by applicable law or rule.

(G) Nothing in this section or in any other section of the Revised Code or in any rule implementing any section of the Revised Code shall prohibit or limit the superintendent from issuing any orders or taking any actions pursuant to any other provision of law or rule, including sections 1121.32, 1121.33, 1121.34, 1121.35, and 1121.41 of the Revised Code, with respect to a bank or regulated person, either individually or contemporaneously with actions taken under this section, and whether alone or in conjunction with any other regulatory agencies or authorities.