

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 2
GENERAL POWERS

487.12201 Rules.

Sec. 2201. The commissioner may promulgate rules under the administrative procedures act of 1969 as he or she considers necessary to effectuate the purposes and to enforce this act.

History: 1999, Act 276, Eff. Mar. 1, 2000.

487.12202 Examination of institution, its subsidiaries, and service entities.

Sec. 2202. (1) Each institution and its subsidiaries and service entities are subject to examination of their condition and affairs by the director or his or her authorized agent at least once every 18 months.

(2) The director shall examine an institution under the director's jurisdiction when requested by its board of directors. In connection with an examination, the director, or his or her authorized agent, may examine under oath a director, officer, agent, employee, or shareholder of an institution concerning the affairs and business of the institution. The director shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules promulgated under law.

(3) If an institution under the director's jurisdiction, by contract or otherwise, engages a service provider to perform any services of a service provider, whether on or off its premises, that performance is subject to regulation, examination, and enforcement by the director, or his or her authorized agent, to the same extent as if those services were performed by the institution itself on its own premises.

(4) The director, or his or her authorized agent, may examine an affiliate or bank holding company of an institution that is under the director's jurisdiction.

(5) The director may examine the branch or branches located in this state of an out-of-state bank as permitted under the federal deposit insurance act.

(6) In fulfilling the requirements of subsections (1) and (2) and the authority granted under subsections (3) and (4), the director may use an examination made by any federal or state bank regulatory agency. The director may require the institution to furnish a copy of any report required by a federal or state bank regulatory agency.

(7) An examination required under this section may include the fiduciary activities of the institution.

(8) The director may contract with other state bank regulatory agencies to assist in the conduct of examinations of banks with 1 or more branches located in other states and in examinations of out-of-state banks with 1 or more branches located in this state.

(9) The contents of a report of examination of a bank and examination-related documents prepared or obtained under this section remain the property of the director. Any document, material, or information related to an examination under this act is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(10) The director, or any person that received documents, materials, or information while acting under the director's authority, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (9).

(11) To assist in the performance of the director's duties under this act, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that are subject to subsection (9), with other state, federal, and international regulatory agencies, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The director shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that the documents, materials, or information the director receives are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(c) Enter into agreements governing the sharing and use of information that are consistent with this subsection.

(12) The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information under subsection (11), is not a waiver of, and shall not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

(13) A person to which confidential and privileged documents, materials, or information is disclosed shall not further disseminate those confidential and privileged documents, materials, or information.

(14) Any person on which a demand for production of confidential and privileged documents, materials, or information is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential and privileged documents, materials, or information and must notify the director of the demand. If the director is notified of a demand under this subsection, the director may intervene for the purpose of enforcing the limitations of this section or seeking the withdrawal or termination of the attempt to compel production of the confidential and privileged documents, materials, or information.

(15) Any request for discovery or disclosure of confidential and privileged documents, materials, or information, whether by subpoena, order, or other judicial or administrative process, shall be made to the director, and the director shall determine within 21 days whether to disclose the documents, materials, or information under this act. If the director determines that the documents, material, or information will not be disclosed, the director's decision is subject to judicial review.

(16) The judicial review of a decision of the director under subsection (15) may include in camera judicial review of the confidential and privileged documents, materials, or information. After judicial review, a court may only order disclosure of the portions of the confidential and privileged documents, materials, or information that are relevant and otherwise unobtainable by the requesting party.

(17) The director may immediately appeal any court order described in subsection (16) that compels disclosure of confidential and privileged documents, materials, or information, and the order is automatically stayed pending the outcome of the appeal.

(18) In an addendum to a report of an examination under this section, the director or his or her authorized agent may suggest best practices or other improvements in the operation of a bank that are not required by law or regulation or to address safety and soundness of the bank. The manner in which a bank addresses issues concerning its operations is within the discretion of the bank in the exercise of its business judgment, except as required by law or regulation or to address a concern over safety and soundness. The director shall not take action against a bank under this act based on a failure or refusal of a bank to follow a best practice or other recommended improvement in the operation of the bank that is suggested informally by an examiner or that is contained in an addendum to a report of examination.

(19) Within 1 year after the effective date of the amendatory act that added this subsection, the director shall issue guidance to promote consistency and due process in the examination process under this section, including, but not limited to, establishing guidelines that define the scope of the examination process and clarify how examination issues will be resolved.

History: 1999, Act 276, Eff. Mar. 1, 2000;—Am. 2016, Act 175, Eff. Sept. 12, 2016.

487.12203 Fees; state bank regulatory fund.

Sec. 2203. (1) The director shall periodically establish a schedule of supervisory fees to be paid by banks. Except for a minimum fee consistent with subsection (2), the fee shall not be more than 1 of the following percentages, as applicable, of the total assets of the bank as reported by the bank on its report of condition as of December 31 of the previous year:

(a) In 2016, 1/40 of 1%.

(b) In 2017, 1/20 of 1%.

(c) In 2018 and 2019, 3/40 of 1%.

(d) In 2020 and in subsequent years, 1/10 of 1%.

(2) The annual supervisory fee established by the director under subsection (1) shall be at least \$1,000.00.

(3) The director shall provide an invoice of the supervisory fee on or before July 1 of each year. A bank must pay the annual supervisory fee on or before August 15 of that year.

(4) The director shall base the initial supervisory fee for a bank that obtained a charter as a result of a conversion on the total assets of the bank as reported in its report of condition as of December 31 of the previous year under its prior charter.

(5) The supervisory fee of a bank that was not engaged in the business of banking on December 31 of the previous year shall be the minimum supervisory fee established by the director under subsections (1) and (2).

(6) The director shall periodically establish a schedule of fees, beyond those charged for normal

supervision, to be paid for applications, special evaluations and analyses, and examinations.

(7) The director shall base the fees established under subsection (6) on the estimated cost to the department of conducting the activities for which the fees are imposed.

(8) The director may charge reasonable fees for furnishing and certifying copies of documents or serving notices required under this act.

(9) To the extent any fees, penalties, or fines assessed under this act are unpaid when due, the director may, after providing proper notice, maintain an action for the recovery of the fees, penalties, or fines plus interest and costs.

(10) The fees, expenses, compensation, penalties, and fines collected under this act are not refundable.

(11) The state bank regulatory fund is established in the department of treasury. All of the following apply to the state bank regulatory fund:

(a) The fund shall consist of the following:

(i) Fees, expenses, compensation, penalties, and fines received or collected under this act.

(ii) Money appropriated to the fund.

(iii) Donations of money made to the fund from any source.

(iv) Interest and earnings from fund investments.

(b) Money in the fund at the close of a fiscal year shall remain in the fund and shall not revert to the general fund.

(c) Upon appropriation, the department shall use the money in the fund only for bank regulatory purposes, as determined by the director.

(d) The state treasurer shall direct the investment of the fund.

(e) The department is the administrator of the fund for auditing purposes.

History: 1999, Act 276, Eff. Mar. 1, 2000;—Am. 2016, Act 175, Eff. Sept. 12, 2016.

487.12204 Declaratory rulings, orders, or determinations.

Sec. 2204. (1) The commissioner may issue declaratory rulings in accordance with the administrative procedures act of 1969, or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act that will authorize banks to exercise powers appropriate and necessary to compete with other providers of financial services.

(2) In the exercise of the discretion permitted by this section, the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of depository institutions operating under state or federal law or regulation, the powers of other competing entities providing financial services, and any specific limitations on bank powers contained in this act or in any other law of this state. The commissioner shall give notice, at least quarterly, to all banks of declaratory rulings, orders, or determinations issued during the preceding quarter under this section.

History: 1999, Act 276, Eff. Mar. 1, 2000.