

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 3
ENFORCEMENT POWERS

487.12301 Subpoena powers.

Sec. 2301. The commissioner may petition the circuit court for the county of Ingham or the circuit court in the jurisdiction where an examination is being conducted to issue a subpoena on behalf of the bureau which shall require the person subpoenaed to appear and testify under oath to any matter related to the examination and to produce any relevant documents.

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

487.12302 Application.

Sec. 2302. (1) A bank that seeks the commissioner's approval under section 2204, 3102, 3103, 3701, 3707, 3709, 4106, 4310, 4401, 5101, or 5102 shall submit an application to the bureau.

(2) The application shall contain information and be accompanied by documents as required by the bureau.

(3) If an application is considered incomplete by the bureau, it will either be returned for completion or the applicant will be requested to submit additional information as necessary to make the application complete.

(4) When the application is considered complete by the bureau, it shall be accepted and the process of reviewing its contents for a decision will begin on that date.

(5) The statutory period, as set forth in this section, regarding the issuance of orders by the commissioner shall commence on the date of acceptance of the application.

(6) If, subsequent to the date of acceptance, the applicant wishes to amend the application or supplement or provide additional material in connection with the application, the commissioner may suspend processing of the application or proceed with the statutory period for the issuance of an order.

(7) In connection with an application, the commissioner may consider additional information from any source.

(8) The commissioner shall approve or disapprove an application in writing within 100 days after the date of acceptance of an application, or the last amendment to the application. An order disapproving an application shall state the basis for disapproval.

(9) An applicant who is dissatisfied with an order of the commissioner, or an institution that is dissatisfied with an objection issued under section 3711 or 3713, may submit a written request for a reconsideration of the order or objection stating the reasons for the request. The request must be received by the bureau within 5 days after the date of the order or objection. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant 10 days to file written arguments or briefs. The commissioner may allow for oral argument after granting a petition for reconsideration. The oral argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

(10) Appeal of an order or objection shall not be made by an applicant without first requesting a reconsideration of the order or objection.

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

487.12303 Reconsideration of order, ruling, or finding; hearing.

Sec. 2303. (1) Except with respect to rules promulgated under section 2201, a cease and desist order made under sections 2304 to 2314, an order made on an application seeking approval of the commissioner under section 2302(1), or an objection issued under section 3711 or 3713, an institution that is dissatisfied with an order, ruling, or finding issued by the commissioner may request a reconsideration of the order, ruling, or finding within 10 days after the issuance of the order, ruling, or finding. The commissioner may conduct a formal hearing before the issuance of an order, ruling, or finding. Within 30 days after the receipt of a written request for reconsideration, the commissioner shall hold a formal hearing unless a formal hearing has been held before the issuance of the order, ruling, or finding.

(2) A hearing held under subsection (1) shall be conducted under the administrative procedures act of 1969.

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

487.12304 Notice of charges; hearing; issuance of order to cease and desist; enforcement; notice to comptroller of currency and attorney general.

Sec. 2304. (1) If in the opinion of the commissioner an institution is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of the institution or is violating, has violated, or is about to violate a law or rule, the commissioner may issue and serve upon the institution a notice of charges. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place for a hearing to determine whether an order to cease and desist should issue. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the commissioner at the request of the institution. If the institution does not appear at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of a cease and desist order.

(2) In the event of consent, or if upon the record made at the hearing the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(3) A cease and desist order becomes effective 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

(4) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a bank.

(5) If the commissioner determines that a national bank is acting in violation of the laws of this state, the commissioner shall notify the comptroller of the currency and the attorney general.

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

487.12305 Temporary cease and desist order.

Sec. 2305. (1) If the commissioner determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution under section 2304(1), or the continuation of the violation or practice, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the institution to cease and desist from any violation or practice. The order shall become effective upon service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by subsection (2), shall remain effective and enforceable pending the completion of the proceedings under section 2304.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the principal office of the institution is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the proceedings under section 2304. The court shall have jurisdiction to issue the injunction.

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

487.12306 Conduct constituting breach of fiduciary duty; order of removal or prohibition.

Sec. 2306. (1) If in the opinion of the commissioner any director or officer of an institution has committed any violation of law or rule or of a cease and desist order or other order of the commissioner which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of intention to remove the person from office.

(2) If in the opinion of the commissioner any director, officer, or any other person participating, or who has participated, in the conduct of the affairs of an institution, by conduct or practice with respect to the institution or other business organization resulted in substantial financial loss or other damage, has evidenced personal unfitness to participate in the conduct of the affairs of the institution, the commissioner may serve upon the director, officer, or other person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of the institution.

(3) In respect to a person to whom notice is sent under subsection (1) or (2), if the commissioner considers

it necessary for the protection of the institution or the interests of its depositors that the person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the commissioner may serve upon the person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct of affairs of the institution. The suspension or prohibition shall be effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 2307, shall remain in effect pending the completion of the administrative proceedings and the commissioner dismisses the charges specified in the notice or, if an order of removal or prohibition is issued, until the effective date of the order. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. If the person does not appear at the hearing in person or by a duly authorized representative, the person shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as appropriate. The order is effective at the expiration of 30 days after service upon the institution and the person concerned except in the case of an order issued upon consent, which is effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

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

487.12307 Stay of suspension or prohibition; issuance by court.

Sec. 2307. Within 10 days after the date a person has been suspended from office or prohibited from participation in the conduct of the affairs of any institution under section 2306(3), the person may apply to the Ingham county circuit court or the circuit court for the county in which the principal office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the person under section 2306(1) or (2) and the court shall have jurisdiction to stay the suspension or prohibition.

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

487.12308 Conduct involving felony or misdemeanor charge; order of removal or prohibition.

Sec. 2308. If any person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant, or complaint by a county, state, or federal authority with the commission of, or participation in, a felony or misdemeanor that involves fraud, dishonesty, or breach of trust, the director, by written notice served upon the person may suspend the person from office or prohibit the person from further participation in any manner in the conduct of the affairs of the institution. A copy of the notice shall also be served upon the institution. The suspension or prohibition is in effect until the information, indictment, warrant, or complaint is finally disposed of or until terminated by the director. If a judgment of conviction with respect to the offense is entered against the person, and when the judgment is not subject to further appellate review, the director may issue an order removing the person from office or prohibiting the person from further participation in the conduct of the affairs of the institution except with the consent of the director. The person shall cease to be a director or officer of the institution when a copy of the order is served upon the institution. A finding of not guilty or other disposition of the charge shall not preclude the director from instituting proceedings to suspend or remove the person from office or to prohibit further participation in institution affairs under section 2306(1), (2), or (3).

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

487.12309 Quorum of board of directors.

Sec. 2309. If at any time, because of the suspension or removal of 1 or more directors under this act, the board of directors of an institution has less than a quorum of directors, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the directors on the board not suspended or removed, until there is a quorum of the board of directors. If all of the directors of an institution are suspended or removed under this act, the commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until their successors are duly elected and take office.

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

487.12310 Hearing; decision; review; consent order; modification, termination, or setting aside order.

Sec. 2310. (1) An administrative hearing provided for in section 2304, 2305, 2306, or 2307 shall be conducted under the administrative procedures act of 1969. The hearing shall be private, unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after notifying the parties that the case has been submitted for final decision, the commissioner shall render a decision that includes findings of fact upon which the decision is predicated and issue and serve upon each party to the proceeding an order consistent with this section.

(2) Except as provided in subsection (3), a party to the proceeding, or any person required by an order issued under section 2304, 2305, 2306, or 2308 to cease and desist from any of the violations or practices stated in the order or to be suspended, removed, or prohibited from participation in the conduct of the affairs of any institution, may request a review by a court of competent jurisdiction of the order served under subsection (1). The petition for review shall be filed within 30 days from the date the order is issued.

(3) An order entered as a consent order shall be reviewed as provided in the administrative procedures act of 1969.

(4) Unless a petition for review is timely filed under subsection (2), the commissioner may, at any time, upon appropriate notice, modify, terminate, or set aside the order. If a petition is timely filed, the commissioner may modify, terminate, or set aside the order with the permission of the court.

(5) Unless otherwise specifically ordered by the court, a proceeding for review under this section does not stay an order issued by the commissioner.

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

487.12311 Enforcement powers; jurisdiction of court.

Sec. 2311. (1) The commissioner may apply to the circuit court of the county in which the principal office of the institution is located, or to the circuit court for Ingham county, for the enforcement of any effective and outstanding notice or order issued under section 2304, 2305, 2306, 2308, or 2310, including any temporary cease and desist order issued under section 2305(1). The court shall have jurisdiction and power to order and require compliance with the notice or order.

(2) Except as otherwise provided in this section, a court does not have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under section 2304, 2305, 2306, 2308, or 2310 or to review, modify, suspend, terminate, or set aside the notice or order.

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

487.12312 Prohibited conduct; fine.

Sec. 2312. A person, against whom there is outstanding and effective any notice or final order under section 2306(1), (2), or (3) or of section 2308, who participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in the institution, or, without the prior written approval of the commissioner, votes for a director or serves or acts as a director, officer, or employee of any institution shall be fined not more than \$5,000.00 or imprisoned not more than 1 year, or both.

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

487.12313 Service of notice or order.

Sec. 2313. A service required or authorized to be made by the commissioner under this section or section 2304, 2305, 2306, 2308, 2310, or 2314 may be made by registered or certified mail, or in any other manner reasonably calculated to give actual notice. Copies of a notice or order served by the commissioner upon an institution or any person participating in the conduct of the institution's affairs, under section 2304, 2305, 2306, 2308, or 2310 shall also be sent to the appropriate federal and out-of-state bank, association, and savings bank regulatory agencies.

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

487.12314 Notice to federal supervisory authorities.

Sec. 2314. In connection with a proceeding under section 2304, 2305(1), or 2306, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute a proceeding and the grounds for the proceedings. An institution or other party that is the subject of any notice or order issued by the commissioner under section 2304, 2305, 2306, 2308, or 2310 shall not have standing to raise the

requirements of section 2313 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of any notice or order.

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

487.12315 Foreign bank; prohibited conduct.

Sec. 2315. (1) If, in the opinion of the commissioner, a foreign bank is engaging, has engaged, or is about to engage, in an unsafe or unsound practice in conducting the business of a state agency, state foreign bank branch, or foreign bank representative office, or is violating, has violated, or is about to violate, a state or federal law or a state or federal rule or regulation, the commissioner may issue and serve upon the foreign bank a notice of intent to revoke the foreign bank's authority to engage in the business of banking in this state. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation and inform the foreign bank of its right to request a hearing within 10 days.

(2) If the foreign bank timely requests a hearing, the commissioner shall hold a hearing in accordance with the administrative procedures act of 1969.

(3) Within 60 days after the date of the hearing, the commissioner shall file a written decision containing his or her findings and serve a copy upon the foreign bank.

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