

**BANKING CODE OF 1999 (EXCERPT)**  
**Act 276 of 1999**

CHAPTER 2  
FINANCIAL INSTITUTIONS BUREAU

PART 1  
ADMINISTRATION

**487.12101 Financial institutions bureau; creation; jurisdiction; commissioner; appointment; duties; seal; other employment.**

Sec. 2101. (1) A financial institutions bureau is created within the department of consumer and industry services, and the bureau shall have jurisdiction over and administer the laws relating to financial institutions transacting business in this state.

(2) The head of the financial institutions bureau is the commissioner who shall be appointed by the governor, with the advice and consent of the senate, to serve at the pleasure of the governor.

(3) Before assuming the duties of office, the commissioner shall take and subscribe the constitutional oath of office and file it with the secretary of state.

(4) The commissioner shall approve a seal for the use of the bureau. A description and impression of the seal shall be filed with the secretary of state.

(5) The commissioner is prohibited for a period of 6 months from the date he or she leaves office from accepting employment with a state chartered depository financial institution regulated by the bureau.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**487.12102 Purpose of act.**

Sec. 2102. This act shall be implemented by the commissioner to maximize the capacity of banks to offer convenient and efficient financial services, to promote economic development, and to ensure that banks remain competitive with other types of financial service providers.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**487.12103 Powers and duties vested under former act; transfer of property, books, and other papers; effect of orders and rules.**

Sec. 2103. (1) The powers and duties vested by law in the financial institutions bureau under former 1969 PA 319 are vested in the bureau under this act. Any hearing or other proceeding pending before the bureau before the effective date of this act shall not abate but is transferred to the bureau under this act and shall be conducted and determined by the bureau in accordance with the provisions of the law governing such hearing or proceeding.

(2) All property, credits, books, correspondence, funds, appropriations, records, files, and other papers belonging to the financial institutions bureau under former 1969 PA 319 are transferred to the bureau under this act. All orders and rules which have been issued under law by the commissioner under former 1969 PA 319, and which are in effect shall continue in effect until modified, suspended, revoked, or repealed by the commissioner.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

**487.12104 Deputies; appointment by commissioner; duties; revocation.**

Sec. 2104. (1) The commissioner shall appoint a chief deputy who shall perform the duties of the commissioner during the commissioner's absence from the bureau. The commissioner may appoint other deputies as he or she considers appropriate and may delegate general or specific responsibilities under this act to the other deputies. The commissioner may designate that 1 or more of the other deputies perform the duties of the commissioner when both the commissioner and the chief deputy commissioner are absent from the bureau. The chief deputy and other deputies shall take and subscribe the constitutional oath of office and file

it with the secretary of state.

(2) The commissioner may, at any time, revoke an appointment, designation, or delegation made under this section.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **487.12105 Employees; appointment by commissioner; compensation; duties; revocation.**

Sec. 2105. (1) The commissioner may appoint employees to carry out specific functions under this act. The compensation, travel, and other expenses of the commissioner, deputy commissioners, and employees shall be paid in the manner provided by law for other state officers and employees, within the appropriations made by the legislature.

(2) The commissioner may delegate to employees duties authorized to the commissioner under this act.

(3) The commissioner may, at any time, revoke any delegation made under this section.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **487.12106 Commissioner, deputy commissioner, or examiner; prohibited conduct.**

Sec. 2106. (1) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be a shareholder, either directly or indirectly, of a financial institution, a national bank, federal savings and loan association, or federal savings bank that maintains a main office or branch office in this state, or of any affiliate or subsidiary thereof. The commissioner, a deputy commissioner, or an examiner of the bureau may be a shareholder of a credit union, a mutual savings and loan association, or a mutual savings bank.

(2) During his or her term of office or employment, the commissioner, a deputy commissioner, or an examiner of the bureau shall not be an officer, director, or employee of a financial institution, or of a depository institution, or of any affiliate or subsidiary thereof or receive, either directly or indirectly, anything of value, or other compensation from such entities.

(3) If a deputy commissioner or an examiner of the bureau borrows from, or is or becomes indebted to a financial institution, he or she shall make a written report to the bureau stating the name of the lender, the amount and terms of the loan or indebtedness, the security given on the loan, and the purpose for which the proceeds are to be used.

(4) A deputy commissioner or an examiner of the bureau shall not borrow from or become indebted to a financial institution for which the deputy commissioner or examiner has direct supervisory responsibility, or from a subsidiary or affiliate of such a financial institution, except for installment debt transferred to a financial institution in the regular course of business by a seller of consumer goods. An examiner shall not borrow from or become indebted to a financial institution if the examiner has ever participated in an examination of the financial institution.

(5) The commissioner shall not borrow from or become indebted to a financial institution except for installment debt transferred to a financial institution in the regular course of business by a seller of consumer goods.

(6) Subsections (4) and (5) do not apply to loans made or indebtedness incurred before the commissioner's, deputy commissioner's, or examiner's term of office or made or incurred lawfully before the effective date of this act. If a loan received or indebtedness incurred in conformance with this act subsequently becomes nonconforming due to an event outside the commissioner's, deputy commissioner's, or examiner's control, the loan or indebtedness may be retained. Neither the term nor the amount of a nonconforming loan or indebtedness described in this subsection shall be increased following the event which made the loan or indebtedness nonconforming.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **487.12107 Liability; immunity.**

Sec. 2107. The commissioner or any other employee of the bureau shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **487.12108 Annual report.**

Sec. 2108. For each calendar year the commissioner shall compile and publish an annual report in the form and containing information the commissioner determines necessary to reasonably summarize the operations of the bureau during the year.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

#### **487.12109 Confidentiality; disclosures.**

Sec. 2109. (1) The commissioner and all deputies, agents, and employees of the bureau shall keep secret all facts and information obtained in the course of their duties, except if the person is required under law to report upon, take official action, or testify in any proceedings regarding the affairs of an institution. This subsection applies to all former commissioners, deputies, agents, and employees of the bureau.

(2) This section does not apply to, and does not prohibit the furnishing of information or documents to, the federal, foreign, or out-of-state bank, association, or savings bank regulatory agencies, and is not applicable to disclosures made in the public interest by the commissioner, at his or her discretion.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the commissioner of the financial institutions bureau to the commissioner of the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

## **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.



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.

### **PART 4**

### **RECEIVERSHIPS AND CONSERVATORSHIPS**

#### **487.12401 Liquidation; receiver or other liquidating agent.**

Sec. 2401. (1) Except as provided in subsection (2), a bank subject to this act shall not be liquidated except as provided by this act. A receiver or other liquidating agent shall not be appointed for a bank or its assets and property except as provided in this act.

(2) If the federal deposit insurance corporation is appointed as receiver of a bank, the receivership procedures of the federal deposit insurance corporation shall govern the receivership.

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

#### **487.12402 Appointment of receiver; conditions; procedures.**

Sec. 2402. (1) If a bank has refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, becomes insolvent, refuses to submit its books, papers, and records for inspection by the commissioner, or if the bank appears to the commissioner that the bank is in an unsafe or unsound condition, the commissioner shall either appoint a conservator under section 2406 or apply to the circuit court for Ingham county or for the county in which the bank is located for the appointment of a receiver for the bank.

(2) In any proceeding for the appointment of a receiver, the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the bank are insured to any extent by the corporation. The court may act upon the application immediately and without notice to any person. If at any time it appears to the court that the claimed reasons for receivership do not exist, the court shall dissolve the receivership and terminate the proceedings.

(3) The federal deposit insurance corporation may act as receiver without bond. All other receivers, with the exception of the bureau employee appointed as receiver in his or her official capacity, shall post a bond in an amount to be determined by the court.

(4) If the deposits of a bank described in subsection (1) are not insured by the federal deposit insurance corporation, the commissioner may elect not to seek appointment of a receiver for the bank. If a receiver is not sought, the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent business corporations, title 11 of the United States Code, being section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to 5265 of the revised judicature act of 1961, MCL 600.5201 to 600.5265, governing assignments for the benefit of creditors, shall apply to the insolvent bank.

(5) The receiver shall on a regular basis report to the commissioner regarding all matters involving the receivership.

(6) If any bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed bank, the corporation, whether or not it has become receiver of the bank, is subrogated to all of the rights of the owners of the deposits against the closed bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal deposit insurance act.

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

#### **487.12403 Receiver; duties; powers.**

Sec. 2403. (1) Subject to court approval, a receiver shall do all of the following:

- (a) Take possession of the books, records, and assets of the bank and collect all debts, dues, and claims belonging to the bank.
- (b) Sue and defend, compromise, and settle all claims involving the bank.
- (c) Sell all real and personal property.
- (d) Exercise all fiduciary functions of the bank as of the date of the commencement of the receivership.
- (e) Pay all administrative expenses of the receivership which shall be a first charge upon the assets of the bank and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.
- (f) Pay ratably any and all debts of the bank, except that debts not exceeding \$500.00 in amount may be paid in full but the holders of such debt shall not be entitled to interest on the debt.
- (g) Repay ratably any amount which may have been paid in by any shareholder by reason of assessments made upon the stock of the bank by order of the commissioner in accordance with this act.
- (h) Pay ratably to the shareholders of the bank in proportion to the number of shares held and owned by each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f), and (g).
- (i) Have all the powers of the directors, officers, and shareholders of the bank as necessary to support an action taken on behalf of the bank.
- (j) Hold title to all the bank's property, contracts, and rights of action beginning on the date the bank is ordered in receivership.

(2) Subject to court approval, a receiver may do any of the following:

- (a) Borrow money as necessary or expedient in aiding the liquidation of the bank and secure these borrowings by the pledge, hypothecation, or mortgage of the assets of the bank.
- (b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the bureau if the receiver considers the employment to be advantageous or desirable. The expense of employing bureau personnel is an administrative expense of the liquidation that is payable to the bureau.
- (c) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers by the circuit court.

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

#### **487.12404 Lien on property or assets; voidable transfer.**

Sec. 2404. (1) A transfer of or lien on the property or assets of the bank is voidable by the receiver if the transfer or lien was 1 or more of the following:

- (a) Made or created within 1 year before the date the bank is ordered in receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the bank or an affiliate of the bank.
- (b) Made or created on or within 90 days before the date the bank is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.
- (c) Accepted after the bank is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.
- (d) Voidable by the bank and the bank may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the bank was ordered in receivership.

(2) For purposes of this section, "preference" means a transfer or grant of an interest in the property or assets of the bank that is either of the following:

- (a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the bank was or became indebted.
- (b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the bank was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.
- (3) A person acting on behalf of the bank, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the bank.

(4) Notwithstanding any other provisions of this act, an otherwise voidable transfer under this section will not be voided by the receiver, if any of the following apply:

- (a) The transfer or lien does not exceed the value of \$1,000.00.
- (b) The transfer or lien was received in good faith by a person, who is not a person described in subsection (1)(a), who gave value.
- (c) The transfer of lien was intended by the bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the bank.

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

#### **487.12405 Records.**

Sec. 2405. (1) On approval by the court, the receiver may dispose of records of the bank in receivership that are obsolete and unnecessary to the continued administration of the receivership proceeding and retain the remaining records of the bank and the receivership for a period of time as ordered by the court.

(2) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the bank and of the receiver's office, including maintaining those records on any medium approved by the court.

(3) The receiver may reserve assets of an estate, deposit them in an account, and use them to maintain the records of a liquidated bank after the closing of the receivership proceeding.

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

#### **487.12406 Conservator; appointment; bond and security; qualifications; expenses.**

Sec. 2406. (1) If any of the grounds under section 2402 authorizing the appointment of a receiver exist or if the commissioner considers it necessary in order to conserve the assets of a bank for the benefit of the depositors and other creditors of the bank, the commissioner may appoint a conservator for the bank and require of the conservator a bond and security as determined by the commissioner.

(2) The commissioner may appoint as conservator an employee of the bureau or any other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses. All expenses of any conservatorship shall be paid out of the assets of the bank, upon the approval of the commissioner, and shall be a first charge upon the assets and paid in full before any final distribution or payment of dividends to creditors or shareholders.

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

#### **487.12407 Conservator; rights, powers, and privileges.**

Sec. 2407. (1) The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of the bank, and take any action necessary to conserve the assets of the bank pending further disposition of its business as provided by law. The conservator shall have all the rights, powers, and privileges of receivers of banks appointed under this act and shall be subject to the obligations and penalties to which receivers are subject which are not inconsistent with this act with respect to conservators.

(2) During the time that the conservator remains in possession of the bank, the rights of all parties with respect to the bank, subject to the other provisions of this act with respect to conservators, shall be the same as if a receiver had been appointed. The conservator may execute the discharge of any real estate mortgage held as part of the assets of the bank.

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

#### **487.12408 Deposits received while bank in conservatorship.**

Sec. 2408. (1) While a bank is in conservatorship, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, amounts that in the opinion of the commissioner may be used safely for this purpose.

(2) The commissioner may permit the conservator to receive deposits.

(3) Deposits received while the bank is in conservatorship shall not be subject to any limitation as to payment or withdrawal. The deposits and any new assets acquired on account of the deposits shall be segregated and held especially for the new deposits and shall not be used to liquidate any indebtedness of the bank existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank existing at the time the conservator was appointed.

(4) The requirements of subsection (3) shall remain in effect not more than 15 days following the date that the conservator returns control of the bank to its board of directors.

(5) Deposits received while the bank is in conservatorship shall be kept in cash, invested in the direct obligations of the United States, or deposited in depository institutions designated by the commissioner.

(6) Before returning control of the bank to its board of directors, the conservator shall publish a notice in

form approved by the commissioner, stating the date on which the affairs of the bank will be returned to its board of directors and that the provisions of subsection (3) will not be in effect after 15 days from that date. The conservator shall send a copy of the notice to every person who deposited money in the bank after the appointment of the conservator and before the time when control of the bank is returned to its directors.

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

#### **487.12409 Authority of conservator to borrow money; purpose.**

Sec. 2409. With the prior approval of the commissioner, the conservator of a bank may borrow money as necessary or expedient in aiding the operation, reorganization, or liquidation of the bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation, or mortgage of the assets of the bank.

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

#### **487.12410 Termination of conservatorship.**

Sec. 2410. (1) If satisfied that it may be done safely and that it would be in the public interest, the commissioner may terminate a conservatorship and permit the bank to resume the transaction of its business subject to terms, conditions, restrictions, and limitations as he or she may prescribe.

(2) If the commissioner determines that it would be in the public interest, the commissioner may terminate a conservatorship and apply for the appointment of a receiver for the bank as provided in section 2402.

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