

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 9
ADMINISTRATION

487.13901 Repayment of deposits.

Sec. 3901. Deposits shall be repaid to the depositor, or the depositor's lawful representatives, according to the terms of the agreement between the depositor and the bank.

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

487.13902 Compliance review committee.

Sec. 3902. (1) An officer or the board of directors of a bank may appoint a compliance review committee to evaluate loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with federal or state statutory or regulatory requirements, or other related matters.

(2) Any documents, data, compilations, analyses, or other information and material gathered, generated, created, produced, developed, or prepared by or for a compliance review committee by 1 or more employees of the bank or by 1 or more other persons retained by the bank to assist the compliance review committee in performing its functions shall be considered compliance review material.

(3) A document, compilation, analysis, or item of information, data, or material remains compliance review material under this section even if it is delivered or disclosed to employees of the bank who are not members of the compliance review committee or to attorneys, accountants, auditors, consultants, or other professional advisers retained by the bank or to 1 or more other persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

(4) Except as provided in subsection (5), compliance review material is confidential and is not discoverable or admissible in evidence in any civil action.

(5) Subsection (4) does not apply to any information required by statute or regulation to be maintained by or provided to a governmental entity to the extent that law requires the governmental entity to disclose the information for discovery or admission into evidence.

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

487.13903 Surety bond.

Sec. 3903. (1) The board of directors shall require every employee involved in the handling of money, accounts, or securities of the bank to be bonded by a surety company authorized to do business in this state in an amount determined by the board. The bank shall pay for any surety bonds required of its employees.

(2) Every bank shall maintain a financial institution bond sufficient to protect against loss. If a bank refuses to comply with this requirement, the commissioner may contract for the bond and charge the cost to the bank. If the charge is not paid, the commissioner may collect the charge in an action instituted by the attorney general.

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

487.13904 Indemnification.

Sec. 3904. (1) A bank may indemnify a person described in subsection (2) who was or is a party or is threatened to be made a party to any type of threatened, pending, or completed action, suit, or proceeding, other than an action by or in the right of the bank, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(2) Subsection (1) applies to a person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not.

(3) The termination of an action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(4) A bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorney fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the bank or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank except as authorized in subsection (5).

(5) A director, officer, employee, or agent of the bank who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in this section or was adjudged liable, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

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

487.13905 Indemnification; expenses and amounts.

Sec. 3905. (1) To the extent that a director, officer, employee, or agent of a bank has been successful on the merits or otherwise in defense of an action, suit, or proceeding described in section 3904, or in defense of a claim, issue, or matter in the action, suit, or proceeding, he or she shall be indemnified against actual and reasonable expenses, including attorney fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(2) An indemnification under section 3904, unless ordered by the court, shall be made by the bank only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in section 3904 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not obtainable, by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion, which counsel shall be selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(3) All directors may participate in the designation of a committee under subsection (2)(b) or in the selection of independent legal counsel under subsection (2)(c)(ii).

(4) If a person is entitled to indemnification under section 3904 for a portion of expenses, including reasonable attorney fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount of the expenses, the bank may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

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

487.13906 Director, officer, employee, or agent as party to action; reimbursement.

Sec. 3906. A bank may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent who is a party or threatened to be made a party to an action, suit, or proceeding described in section 3904 in advance of the final disposition of the action, suit, or proceeding if all of the following apply:

(a) The person furnishes the bank a written affirmation of his or her good faith belief that he or she has met

the applicable standard of conduct set forth in section 3904.

(b) The person furnishes the bank a written undertaking executed personally or on his or her behalf to repay the advance if it is ultimately determined that he or she did not meet the standard of conduct. The undertaking shall be by unlimited general obligation of the person on whose behalf advances are made but need not be secured.

(c) A determination is made that the facts then known to those making the determination would not preclude indemnification under this act.

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

487.13907 Other rights to indemnification or advancement; limitation.

Sec. 3907. The indemnification or advancement of expenses provided by or granted under sections 3904, 3905, and 3906 are not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, the bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses. The indemnification provided for in sections 3904, 3905, and 3906 continues as to a person who ceases to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of the person.

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

487.13908 Liability insurance or trust fund.

Sec. 3908. A bank has the power to purchase and maintain insurance or create a trust fund or other form of funded arrangement on behalf of any person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against any liability asserted against him or her and incurred by him or her in that capacity or arising out of his or her status in that capacity, whether or not the bank has the power to indemnify him or her against the liability under sections 3904, 3905, 3906, and 3907.

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

487.13909 Consolidation or merger; position of director, officer, employee, or agent of absorbed depository institution.

Sec. 3909. For purposes of this section and sections 3904, 3905, 3906, 3907, 3908, and 3910, a person who is or was a director, officer, employee, or agent of a depository institution absorbed in a consolidation or merger or is or was serving at the request of the depository institution as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, shall hold the same position with respect to the consolidated bank as he or she would if he or she had served the consolidated bank in that capacity.

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

487.13910 Definitions; person acting in best interests of bank or shareholders.

Sec. 3910. (1) For the purposes of sections 3904, 3905, 3906, 3907, 3908, and 3909:

(a) "Fines" includes any excise taxes assessed on a person with respect to an employee benefit plan.

(b) "Other enterprise" includes employee benefit plans.

(c) "Serving at the request of the bank" includes any service as a director, officer, employee, or agent of the bank that imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.

(2) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner not opposed to the best interests of the bank or its shareholders as referred to in section 3904.

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

487.13911 Reports.

Sec. 3911. (1) The commissioner may require reports from any bank if, in the commissioner's judgment, they are necessary to inform the commissioner fully as to the condition of the bank. The commissioner shall give a bank at least 30 days' notice in writing of the date by which the report is to be submitted to the bureau.

(2) A bank that fails to make, and transmit, any report required under this section shall be subject to a penalty established by the commissioner not to exceed \$1,000.00 for each day after the date for making the report established by the commissioner in subsection (1). The commissioner may maintain an action against a bank for the recovery of the penalty.

(3) A penalty assessed under this section shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.

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

487.13912 Attachment or execution.

Sec. 3912. Attachment or execution shall not be issued against a bank or its property before final judgment in any suit, action, or proceeding involving the bank in any court.

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

487.13913 Action taken or event occurring on or before November 29, 1995.

Sec. 3913. A written agreement entered into under section 130b of former 1969 PA 319 shall remain in effect with regard to actions taken and events occurring on or before November 29, 1995. A cause of action shall not accrue under an agreement for an action taken or event occurring after November 29, 1995.

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