

MICHIGAN BIDCO ACT (EXCERPT)
Act 89 of 1986

487.1707 Order removing subject person from office and prohibiting further participation in business of licensee; notice and hearing; determinations; order suspending subject person from office and prohibiting further participation in business of licensee; application for hearing on order; affirming, modifying, or rescinding order; judicial review; "office" defined.

Sec. 707. (1) The commissioner may issue an order removing a subject person of a licensee from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the commissioner determines all of the following are true:

(a) The subject person has violated this act or another applicable law; the subject person has engaged or participated in an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The commissioner may issue an order removing the subject person from his or her office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner, if, after notice and a hearing, the commissioner determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the commissioner determines that the factors set forth in subsection (1) or (2) are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the commissioner.

(4) Within 30 days after an order is issued under subsection (3), the subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to begin a hearing within 15 business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a subject person of a licensee to whom an order is issued under subsection (3) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order issued under this subsection.

(5) A person to whom an order is issued under this section may apply to the commissioner to modify or rescind the order. The commissioner shall not modify or rescind the order unless the commissioner determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when he or she becomes a subject person of a licensee, will comply with this act.

(6) As used in this section, "office", if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986.