

MICHIGAN BIDCO ACT (EXCERPT)

Act 89 of 1986

ARTICLE 7

ENFORCEMENT

487.1701 Action to enjoin violation or enforce compliance; restraining order, preliminary or permanent injunction, or writ of mandamus; appointment of receiver or conservator; bond.

Sec. 701. If in the opinion of the commissioner, a person violates, or there is reasonable cause to believe that a person is about to violate this act, the commissioner may bring an action in the name of the people of this state in a circuit court to enjoin the violation or to enforce compliance with this act. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond in an action brought under this act.

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

487.1703 Violation of MCL 487.1311; cease and desist order; filing application for hearing on order; rescission of order; judicial review.

Sec. 703. (1) If the commissioner finds that a person has violated or that there is reasonable cause to believe that a person is about to violate section 311, the commissioner may order the person to cease and desist from the violation unless and until the person is issued a license.

(2) Within 30 days after an order is issued under subsection (1), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order. The right of a person to whom an order is issued under subsection (1) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this subsection.

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

487.1705 Cease and desist order; affirmative action to correct condition; application for hearing on order; affirming, modifying, or rescinding order; judicial review.

Sec. 705. (1) If, after notice and a hearing, the commissioner determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate, this act or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the commissioner may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (1), the commissioner may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(3) Within 30 days after an order is issued under subsection (2), the licensee or 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 commence a hearing within 15 business days after the application is filed or within a longer period to which the licensee or 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 licensee or subject person to whom an order is issued under subsection (2) to petition for judicial review of the order is not affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order issued under this subsection.

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

487.1709 Crime involving dishonesty or breach of trust; 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; conviction not required; "office" defined.

Sec. 709. (1) If the commissioner determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and

that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in 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 the conduct of the business of the licensee, except with the consent of the commissioner.

(2) If the commissioner determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (1), or another subject person of a licensee, has been convicted of a crime that is punishable by imprisonment for a term of not less than 1 year and that involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the commissioner may issue an order suspending or removing the subject person or former subject person 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, except with the prior consent of the commissioner.

(3) Within 30 days after an order is issued under subsection (1) or (2), 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 commence 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 or former subject person of a licensee to whom an order is issued under subsection (1) or (2) to petition for judicial review of the order is not affected by the failure of the person to apply to the commissioner for a hearing on the order issued under this subsection.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the commissioner from issuing an order to the subject person under any other provision of this act.

(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, manager, or employee of the licensee or of a subsidiary of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1711 Disclosure to owners.

Sec. 711. If, in the opinion of the commissioner, disclosure to owners regarding a matter is warranted, the commissioner may require a licensee, in a form and manner as the commissioner may specify, to disclose to the owners of a licensee the results of a communication or order from the commissioner addressed to the licensee or to a subject person of the licensee.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1713 Calling meeting of board of directors of licensee or of owners of licensee; notice; expenses.

Sec. 713. (1) If the commissioner considers it expedient, the commissioner may call a meeting of the board of directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the commissioner.

(2) If the commissioner considers it expedient, the commissioner may call a meeting of the owners of a licensee by giving notice of the time, place, and purpose of the meeting not less than 5 days before the meeting to each owner either by personal service or by registered or certified mail sent to the owner's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 1997, Act 150, Imd. Eff. Dec. 2, 1997.

487.1715 Order directing licensee to refrain from providing additional financing assistance to business firms; notice and hearing; determinations; request for hearing; affirming, modifying, or rescinding order; resumption of financing assistance; application to modify or rescind order.

Sec. 715. (1) The commissioner may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the commissioner, the order is necessary

to protect the interests of the licensee or the public interest, and if, after notice and a hearing, the commissioner determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated this act or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the commissioner determines that any of the factors set forth in subsection (1) are true with respect to a licensee and that it is necessary for the protection of the interest of the licensee or the public interest that the commissioner immediately issue an order directing the licensee to refrain from providing any additional financing assistance to business firms, the commissioner may issue such an order without a hearing. Within 30 days after an order is issued under this subsection, the licensee to whom the order is directed may file with the commissioner a request for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(3) With the consent of the commissioner, a licensee which has been the subject of an order under subsection (1) or (2) may resume providing financing assistance to business firms under such conditions as the commissioner may prescribe.

(4) A person to whom an order is issued under subsection (1) or (2) may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application 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 the order is modified or rescinded, will comply with this act.

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

487.1717 Appointment of conservator for licensee; reimbursement of expenses of conservatorship; powers and duties of conservator; liquidation of licensee; appointment of receiver; determinations; manner of liquidation.

Sec. 717. (1) If the commissioner finds that any of the factors set forth in section 715(1) are true with respect to 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 take immediate possession of the property and business of the licensee, the commissioner may appoint a conservator for the licensee. The commissioner may appoint as conservator 1 of the employees of the financial institutions bureau of the department of consumer and industry services or some other competent and disinterested person. The financial institutions bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by the bureau in connection with the conservatorship as expenses. Upon the approval of the commissioner, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the commissioner, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the commissioner may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions, and limitations the commissioner may prescribe.

(3) If in the opinion of the commissioner it is appropriate that the licensee be liquidated, the commissioner, with the attorney general representing the commissioner, may apply to the circuit court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the commissioner determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under subdivision (c) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under subsection (3), the receiver shall liquidate the property and business of the licensee in the manner provided for in sections 2401 to 2403 of the banking code of 1999, 1999 PA 276, MCL 487.12401 to 487.12403, as if the licensee were a bank.

History: 1986, Act 89, Imd. Eff. May 1, 1986;—Am. 2000, Act 445, Imd. Eff. Jan. 9, 2001.

487.1719 Violation of act; amount and disposition of civil penalty; applicability of section; provisions cumulative; liability for certain violations.

Sec. 719. (1) If, after notice and a hearing, the commissioner finds that a person has violated this act, the commissioner may order that person to pay to the commissioner a civil penalty in the amount the commissioner specifies. However, the amount of the civil penalty shall not exceed \$1,000.00 for each violation, or in the case of a continuing violation, \$1,000.00 for each day for which the violation continues. Money collected for a civil penalty under this section shall be paid into the state treasury and credited to the general fund of this state.

(2) This section does not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the commissioner, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) are additional to, and not alternative to, other provisions of this act which authorize the commissioner to issue orders or to take other action on account of a violation of this act. A person who is convicted under section 819 on account of a violation of article 8 shall not be liable to pay a civil penalty under subsection (1) on account of that violation. A person who pays a civil penalty under subsection (1) on account of a violation of article 8 shall not be liable to prosecution under section 819 on account of that violation.

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