

"DEPARTMENT OF BANKING AND SECURITIES CODE"

Act of May 15, 1933, P.L. 565, No. 111

Cl. 07

AN ACT

Relating to the powers and duties of the Department of Banking and Securities and the Secretary of Banking and Securities in exercising supervision over, and taking possession of and conducting or liquidating the business and property of, corporations, associations, and persons receiving deposits or otherwise transacting a banking business, corporations acting as fiduciaries, and building and loan associations; providing for the payment of the expenses of the Department of Banking by supervised corporations, associations, or persons, and appropriating the Banking Department Fund; authorizing the Department of Banking, under certain circumstances, to examine corporations, associations, or persons affiliated, or having business transactions with supervised corporations, associations or persons; authorizing appeals to the Supreme Court, and prescribing and limiting the powers and duties of certain other courts and their prothonotaries, registers of wills, recorders of deeds, and certain State departments, commissions, and officers; authorizing certain local public officers and State departments to collect fees for services rendered under this act; regulating securities; providing penalties; and repealing certain acts and parts of acts. (Title amended July 2, 2012, P.L.814, No.86)

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Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, as follows:

ARTICLE I
SHORT TITLE AND PRELIMINARY PROVISIONS

Section 1. Short title.--This act shall be known, and may be cited, as the "Department of Banking and Securities Code." (1 amended July 2, 2012, P.L.814, No.86)

Section 2. Definitions.--A. The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise:

"Department." The Department of Banking and Securities of this Commonwealth. (Def. amended July 2, 2012, P.L.814, No.86)

"Secretary." The Secretary of Banking and Securities of this Commonwealth, or his duly authorized deputy or representative. (Def. amended July 2, 2012, P.L.814, No.86)

"Corporation." A corporation or a joint stock association, organized under the laws of this Commonwealth, of the United States, or of any other state, territory, foreign country, or dependency.

"Person." An individual, or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals.

"Licensee." A corporation, person or any other type of business entity required to be licensed by, registered with or partially exempt from being licensed by the Department of Banking and Securities under any law of this Commonwealth administered by the Department of Banking and Securities. The term does not include a licensee or registrant under the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," unless otherwise provided in this act. (Def. amended July 2, 2012, P.L.814, No.86)

"Credit union." A Pennsylvania State-chartered credit union.

"Institution." A corporation or a person, as defined in this section, or other type of business entity, including, but not limited to, a mutual holding company, which is or was subject to the supervision of the department. The term does not include credit unions or licensees unless specifically stated otherwise and does not include a licensee or registrant under the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," unless otherwise provided in this act. (Def. amended July 2, 2012, P.L.814, No.86)

"Court." The court of common pleas of the county in which the corporation or person has its principal or only place of business in this Commonwealth; or, where an institution of which the secretary is receiver is concerned, the particular court in which the certificate of possession, as defined later in this act, is filed; or the Commonwealth Court where specified in this act.

"Prothonotary." The prothonotary of such court.

"Written." This includes printed, typewritten, engraved, lithographed, photographed, photostated, telephotographed, electronically transmitted or rendered by other means approved by the Department of Banking.

"Public body of the United States." The Federal Deposit Insurance Corporation or any other agency or instrumentality of the United States which insures deposits of an institution.

"Association." As defined in section 102(3) of the act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967." (Def. added July 2, 2012, P.L.814, No.86)

"Commission." The Banking and Securities Commission of the department established in section 1121-A(a). (Def. added July 2, 2012, P.L.814, No.86)

"Fund." The Banking Fund redesignated in section 1113-A as a continuation of the Banking Department Fund. (Def. added July 2, 2012, P.L.814, No.86)

(A amended Dec. 9, 2002, P.L.1604, No.209)

B. Article and section headings shall not be construed to affect in any manner the scope or meaning of any article or section of this act.

C. The singular shall be construed to include the plural. The masculine shall be construed to include the feminine and the neuter, and conversely the neuter shall be construed to include the masculine and the feminine.

Section 3. Notices to Corporations and Persons.--Unless expressly provided otherwise, all written notices required by this act to be given to any corporation or person shall be (1) served in the manner now or hereafter established by law for the service of writs of summons, except that such service need not be made by the sheriff, or (2) mailed charges prepaid, (a) in the case of an individual, to his last known residence or place of business, (b) in the case of an unincorporated association, or a corporation formed under the laws of this Commonwealth, to its principal office, and (c) in the case of a corporation formed under the laws of some other state, to the office of its duly authorized agent in Pennsylvania, or, if there be no duly authorized agent in Pennsylvania, to its home office in the state of incorporation or in any other state.

If a notice is sent by mail, such notice shall be deemed to have been given to the corporation or person addressed when it is deposited in the United States mail for transmission to such corporation or person.

Section 4. Advertisements, Publications, or Notices in Newspapers.--A. Unless expressly provided otherwise, any advertisement, publication, or notice in a newspaper, required by this act, shall be published once (1) in a newspaper of general circulation in the county, as defined by 45 Pa.C.S. § 101 (relating to definitions) published in the city, borough, or township in which the principal place of business of the institution is located; and (2) in first-class counties, also in the legal newspaper, if any, published within the county, as defined by 45 Pa.C.S. § 101.

If there is no newspaper of general circulation published in the city, borough, or township, then the advertisement, publication, or notice shall be inserted in a newspaper of general circulation in the county, published at the county seat. If no newspaper of general circulation in the county is published at the county seat, then such advertisement, publication, or notice shall be inserted in the newspaper of general circulation published nearest to the city, borough, or township in which the principal place of business of such institution is located and within the county. If there is no newspaper of general circulation published within the county, then the advertisement or notice shall be inserted in the newspaper of general circulation published nearest to such city, borough, or township in an adjoining county.

B. Any proof of publication required by this act shall be in accordance with the requirements set forth in the definition of proof of publication contained in 45 Pa.C.S. § 101.

(4 amended Dec. 9, 2002, P.L.1604, No.209)

Section 5. Waiver of Notice.--Any notice required by this act to be given to any corporation or person may be waived by such corporation or person, either before or after the day prescribed for the giving of such notice, but any such waiver shall not dispense with any advertisement, publication, or notice in a newspaper required by any provision of this act. Such waiver shall be in writing and signed by such corporation or person.

Section 6. Fees.--Except as otherwise specifically provided in this act, any prothonotary or recorder of deeds, and any State department, board, commission, or officer, other than the department or its employees, shall be entitled to receive for services performed, as required by this act, such fees as it lawfully charges for such similar services.

(6 amended Dec. 9, 2002, P.L.1604, No.209)

Section 7. Certification of Copies and Affixing of Department Seal.--All certifications by the department of copies of books, accounts, reports, or other papers filed with it, shall bear the official seal of the department.

Section 8. Fees for Copies and Certifications by Department.--A. The department may prescribe and charge reasonable fees for any copy of a book, account, report, or other paper or record filed in its offices or under its control, and for any certification thereof, authorized or required by law.

B. The following apply to methods of payment:

(1) Whenever the department is authorized to impose or accept payment for an application fee, examination fee, assessment fee, fine, copy fee, certification fee or any other fee or charge, the department may designate receipt of such payment by any means, including wire transfer, credit card, debit card or other similar device.

(2) The department may permit such payment to be made using any medium, including telephone, facsimile transmission, wire transmission, electronic mail, World Wide Web site or any other method related to any transmission mechanism, including the Internet.

(3) The department may enter into any agreement in order to implement this section.

(8 amended Dec. 9, 2002, P.L.1604, No.209)

Section 9. Admissibility of Copies into Evidence.--(9 repealed Apr. 28, 1978, P.L.202, No.53)

Section 10. Evidential Value of Results of Examinations.--The record of any examination or investigation of an institution by the department, or the report by the examiner or employe of the department who conducted such examination or investigation, or a copy of either, when duly certified by the department, shall be prima facie evidence of the facts therein stated in any action, at law or in equity, in which one of the parties is the department, or any officer or employe thereof, either in his official capacity or otherwise, where the basis of the action is an act performed by him in the name of the department.

Section 11. Appeals from Court Orders.--(11 repealed Jun. 3, 1971, P.L.118, No.6)

Section 12. Construction of References.--A. Any reference in this act to any act by title or otherwise shall be construed

to apply to and include any codification wherein the provisions of the act referred to are substantially reenacted.

B. Any reference in this act to the provisions of law on any subject shall apply to statutes and decisions becoming effective after the effective date of this act, as well as those then in existence.

Section 13. Saving Clause.--A. The provisions of this act, in so far as they are the same as those of existing acts, shall be construed as a continuation of such acts, and not as new enactments. The repeal by this act of any existing act or any part thereof shall not be construed to revive any act or part of any act heretofore repealed or superseded.

B. The provisions of this act shall not affect any act done, liability incurred, or right accrued, or any suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any act repealed or superseded by this act.

C. Any person holding office under any act repealed by this act shall continue to hold such office until the expiration of his term, subject to the conditions attached to such office prior to the passage of this act.

D. All resolutions, regulations, and rules made pursuant to any act repealed by this act shall, unless inconsistent with any provision of this act, continue with the same force as if such act had not been repealed.

Section 14. Constitutional Construction.--It is hereby declared to be the legislative intent that if this act cannot take effect in its entirety because of the decision of any court holding unconstitutional any part hereof, the remaining provisions of the act shall be given full force and effect as completely as if the part held unconstitutional had not been included herein.

Section 15. Act Not Applicable to Credit Unions.--Except where otherwise expressly provided, this act does not apply to, and does not affect any act relating to, credit unions as defined in 17 Pa.C.S. (relating to credit unions).

(15 amended Dec. 9, 2002, P.L.1604, No.209)

Section 16. General Authority.--Whenever, under the provisions of this act, the department takes possession of an institution or the secretary becomes receiver of an institution whose deposits or shares are insured by a public body of the United States, such public body may become receiver either by designation of the secretary or appointment by the court in which the certificate of possession is filed. As receiver, such public body shall have the same rights, powers and duties, either with respect to taking possession or acting as receiver, as are provided to the department or secretary under the provisions of this act.

(16 added Oct. 5, 1978, P.L.1133, No.266)

Section 17. Act not Applicable to Securities Licensees and Registrants.--Unless otherwise expressly provided, this act shall not apply to and shall not affect the act of May 5, 1921 (P.L.374, No.176), referred to as the Investment Business Licensing Law, the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," or the act of March 3, 1976 (P.L.42, No.19), known as the "Takeover Disclosure Law."

(17 added July 2, 2012, P.L.814, No.86)

ARTICLE II

JURISDICTION AND MAINTENANCE OF DEPARTMENT

Section 201. Corporations and Persons Subject to Supervision of Department.--The department shall have the power to supervise--

A. (1) All corporations and persons which are authorized to receive or which do receive in this Commonwealth money on deposit or for safe-keeping, or which are authorized to engage or which do engage in this Commonwealth in a banking business, and all corporations which are authorized to act or which do act in this Commonwealth as trustees, guardians, executors, administrators, or in other fiduciary capacities, including, but not limited to, banks, bank and trust companies, trust companies, private banks, savings banks, savings associations, branches, agencies, or representative offices of foreign banks in this Commonwealth, mutual holding companies, and interstate banks, but not including hotels or clubs which receive money from guests or members for temporary safe-keeping, express, steamship, or telegraph companies which receive money for transmission, and attorneys at law, real estate agents, and attorneys in fact, who are not engaged in the business of receiving moneys in this Commonwealth for deposit or for transmission but receive and transmit moneys only as an incident to their general business or profession, brokers licensed under the laws of this Commonwealth, holding membership in a lawfully constituted brokerage exchange, who do and have authority to do only such banking as is incidental to their brokerage business;

(2) All national banking associations, incorporated under the laws of the United States and located within this Commonwealth, which are authorized to act or which do act in this Commonwealth as trustees, guardians, executors, administrators, or in any other fiduciary capacities, to the extent to which supervision by State authorities is or may be permitted under the laws of the United States.

B. If any institution subject to the supervision of the department, including any credit union, also engages in a title insurance business or any other business subject to the supervision of the Insurance Department, then such business shall not be subject to the supervision or examination authority of the department except to the extent necessary to determine the safety and soundness of the institution.

(201 amended Dec. 9, 2002, P.L.1604, No.209)

Section 202. General Scope of Supervision; Exercise of Discretion.--A. In addition to the powers and duties provided for in this act, the department shall exercise any power and fulfill any duty imposed upon it by any other law of this Commonwealth. Except where otherwise specifically provided, the department shall enforce and administer all laws of this Commonwealth which relate to any institution, and shall exercise such general supervision over institutions as will afford the greatest possible safety to depositors, other creditors, and shareholders thereof, ensure the safe and sound conduct of the business of such institutions, conserve their assets, maintain the public confidence in such institutions and protect the public interest.

B. Whenever under this act, discretion is vested in the department or any board thereof as to whether, or the manner in which, to exercise a power or fulfill a duty, the department shall, after such examination or investigation as it shall deem appropriate under the circumstances, exercise such discretion in such a manner as it shall deem necessary to ensure the safe and sound conduct of the business of any institution subject to its supervision, conserve its assets, maintain public

confidence in the business of such institutions and protect the public interest and the interest of depositors, other creditors and shareholders thereof.

C. The department may promulgate such rules and regulations necessary and appropriate to administer this act.

D. The department may issue orders, statements of policy and interpretive letters necessary and appropriate to administer this act or any other statute within the department's jurisdiction to administer or enforce. (D amended Oct. 24, 2012, P.L.1396, No.171)

E. Notwithstanding any other law or provision of this act, the department may require licensees to use and to pay processing fees for using a national electronic licensing system in order to apply for or renew licenses issued pursuant to any statute within the jurisdiction of the department to enforce. Notwithstanding any other law, the department may modify, by publication of a notice in the Pennsylvania Bulletin, license renewal and reporting dates for any licensees subject to this subsection that are inconsistent with the use of a national electronic licensing system. The department is not authorized to require a person or corporation which would otherwise be totally exempt from licensure pursuant to any statute under the department's jurisdiction to submit information to or participate in any national electronic licensing system. (E added July 8, 2008, P.L.827, No.58)

(202 amended Dec. 9, 2002, P.L.1604, No.209)

Section 203. Appropriations for Expenses of Department; Receipts.--(203 repealed June 22, 1994, P.L.351, No.52)

Section 204. Assessment of Expenses of Department upon Institutions.--A. All the expenses of the department, including those enumerated in this act or otherwise authorized by law, shall be charged to and paid by all institutions, including licensees, in such equitable amounts, at such times, and in such manner as the department shall, by general rule or regulation, prescribe. The expenses incurred by the department in connection with any examination or investigation, whether regular or special, including a proportionate part of the salary of any examiner or other employe of the department or third-party expenses, including attorneys retained by the department, may be assessed by the department upon the particular institution examined or investigated.

B. The department shall give written notice to each institution, including licensees, of the amount lawfully charged against it under the provisions of this act. The institution shall pay the amount of such assessment to the department within sixty days after the invoice date on the notice. If payment is not made by any institution or licensee within the sixty-day period, the department may impose in addition to the money assessed a maximum penalty fee of one hundred fifty dollars (\$150.00) for that sixty-day period and each successive thirty-day period of delinquency. In addition, the department, through the Office of Attorney General or its authorized designee, may institute an appropriate action at law for the amount lawfully assessed against such institution, together with any additional costs incurred by the Department of Banking or the Office of Attorney General or its authorized designee by virtue of such failure to pay.

C. This section also applies to licensees. (C added Oct. 24, 2012, P.L.1396, No.171)

(204 amended Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 505 of Act 164 of 1980 provided that section 204 is repealed insofar as it is inconsistent with Act 164.

ARTICLE III
RESTRICTIONS UPON DEPARTMENT AND EMPLOYEES THEREOF

Section 301. Relationships of Employees of Department with Institutions; Penalty.--(301 repealed Oct. 5, 1978, P.L.1133, No.266)

Section 302. Disclosure of Information Forbidden; Penalty; Exceptions.--A. (1) This section applies to matters relating to institutions, credit unions and licensees.

(2) Neither the secretary nor any deputy, examiner, clerk, or other employe of the department, shall publish or divulge to anyone any information contained in or ascertained from any examination or investigation made by the department, or any letter, report, or statement sent to the department, or any other paper or document in the custody of the department, except when the publication or divulgement of such information is made by the department pursuant to the provisions of this act, or when the production of such information is required by subpoena or other legal process of a court of competent jurisdiction, or when it is used in deciding whether to prosecute or in prosecutions or other court actions instituted by or on behalf of or at the request of the department, or when referring for investigation to or in response to a request from any Federal, State or local law enforcement or any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, or when the department provides information to any Federal or State financial regulatory agency, including banking, insurance and securities regulatory agencies, when the information pertains to an enforcement concern. The information shall be provided as may be necessary or appropriate, as determined in the discretion of the secretary.

(3) The service of a subpoena upon the secretary, deputy, examiner, clerk or other employe of the department shall not be construed as requiring such person to disclose any information, but such person shall have all the rights and privileges as any other subpoenaed party to object to production of information on the same basis as provided in the Rules of Civil Procedure, statute, regulation or common law. The department may condition the release of such information on an order from a court of competent jurisdiction protecting the information from general disclosure to the public. The department retains and may exercise any and all remedies at law and in equity to quash a subpoena.

(4) Any privileges available to Federal financial institution regulators under Federal statute, regulation or common law shall be available to the department.

(5) The department may provide to any person, corporation or Federal, State or local government agency the following information regarding licensees, institutions and credit unions to the extent that the department has such information in its possession: the type of license held by the licensee; whether a license application submitted by any person or corporation has been denied pursuant to a final order or adjudication issued by the department; whether and for what time period a licensee's license is current, suspended or revoked pursuant to a final order or adjudication issued by the department; whether and for what time period an individual is or has been suspended or prohibited from working for or otherwise participating as a licensee or in any other capacity in businesses regulated by

the department pursuant to a final order or adjudication issued by the department; and whether and to what extent a corporation, person, institution, credit union or licensee is or has been subject to a fine, order or adjudication issued by the department. ((5) amended Oct. 24, 2012, P.L.1396, No.171)

(6) ((6) deleted by amendment)

(7) If the department is subpoenaed for a report of examination information, the department may refuse to release the requested information as the secretary deems necessary and appropriate under the circumstances for the following reasons: safety and soundness; if the department requests and is denied a protective order; or if the department requests and is denied redaction of the report of examination to protect the privacy of persons not involved in the litigation.

B. A violation of the provisions of this section by the secretary, or by any deputy, examiner, clerk, or other employe of the department, shall be sufficient ground for his removal from office. In addition the secretary, deputy, examiner, clerk, or other employe who willfully or knowingly commits such violation shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be subject to imprisonment for a period not exceeding one year, or a fine not exceeding one thousand dollars, or both.

(302 amended July 8, 2008, P.L.827, No.58)

Section 303. Conflicts of Interest; Penalty.--(303 repealed July 2, 2012, P.L.814, No.86)

ARTICLE IV

EXAMINATIONS BY AND REPORTS TO THE DEPARTMENT

Section 401. Examinations of Institutions.--

A. (A deleted by amendment 9, 2002, P.L.1604, No.209)

B. The department, when requested in writing by an owner of all or part of an institution, credit union or licensee, including a shareholder, partner or member, or a director or officer of an institution, credit union or licensee subject to its supervision, may at the department's discretion examine or investigate the affairs and condition of such institution. However, this provision shall not be construed to mean that such person, directors, or shareholders shall have any greater right to require the department to disclose to them the results of any such examination or investigation than they have in the case of any regular examination or investigation.

C. The department, upon the receipt of notice from the Insurance Commissioner that he has become receiver of a corporation or person, any branch of the business of which is subject to the supervision of the department, may examine or investigate the affairs and condition of such institution in order to determine whether any action should be taken by the department, pursuant to the provisions of this act.

D. Examinations or investigations shall be made by the secretary, or by qualified examiners or other qualified employes designated for that purpose by the secretary or by his duly authorized deputy, and empowered, in writing, by the department to make examinations or investigations of institutions, including credit unions and licensees who may be assessed charges to cover the department's costs of such examinations and investigations.

E. In the case of an institution which is a member of a Federal Reserve Bank or any other institution, including a credit union, the department may, in its discretion, accept the examinations or reports made pursuant to the requirements of applicable Federal law in lieu of those required by this act

or any other act of this Commonwealth. The department may accept Federal application forms from applicants for charter or other approvals or nonobjections of the department under the statutes administered by the department in lieu of department forms when the department deems such acceptance appropriate.

F. In connection with any examination or investigation authorized by this act or any other law, the department shall have, in addition to the authority provided by any other law, power to issue subpoenas requiring the attendance of, or the production of pertinent books, papers, electronic data or information of any kind which is in any form by, the officers, directors, agents, employes, or members, respectively, of any corporation or person, including a credit union or licensee, which the department is authorized, under the provisions of this act or any other law of this Commonwealth, to examine. The department shall have power to issue subpoenas to any other person or entity of any kind whatsoever provided that the information from such person or entity is necessary for the enforcement of this act or any other law within the jurisdiction of the department. The department shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers.

Any witness who refuses to obey a subpoena issued under this section, or who refuses to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished as for contempt of court, and, for this purpose, an application may be made to Commonwealth Court or any court of common pleas within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

(401 amended Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 1602(b)(1) of Act 345 of 1967 provided that section 401 A is repealed insofar as it is applicable to savings associations, savings and loan associations and building and loan associations.

Compiler's Note: Section 2202 of Act 356 of 1965 provided that section 401 A, C and E are repealed as to banks, bank and trust companies, trust companies, savings banks, private banks and employes' mutual banking associations.

Section 402. Examination of Corporations or Persons Affiliated with Institutions.--The department shall have the power to supervise, regulate, examine, limit, or prohibit the activities of corporations or persons that are subsidiaries of or are affiliated with institutions, including credit unions, to the same extent as such activities of corporations or persons that are subsidiaries of or are affiliated with national banking associations, Federal savings associations or Federal credit unions, or with members of a Federal Reserve Bank, are, or shall be, supervised, regulated, examined, limited, or prohibited by general law, by Federal statutes or by regulations issued by any Federal authority pursuant to law, but in no event shall the department's examination and enforcement authority over subsidiaries and affiliates be less than is permissible for banking institutions under the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965," savings associations under the act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967," or credit unions under 17 Pa.C.S. (relating to credit unions).

(402 amended Oct. 24, 2012, P.L.1396, No.171)

Compiler's Note: Section 1602(b)(1) of Act 345 of 1967 provided that section 402 B is repealed insofar as it is applicable to savings associations, savings and loan associations and building and loan associations.

Compiler's Note: Section 2202 of Act 356 of 1965 provided that section 402 B is repealed as to banks, bank and trust companies, trust companies, savings banks, private banks and employes' mutual banking associations.

Section 403. Reports to Department; Publication; Penalties.--A. Every institution shall maintain copies of the complete reports of its condition in such form and as of such dates as may be required by the department and publish copies or compilations thereof to the extent required by Federal law.

The department may also require special reports on the condition of, or any particular facts concerning, any institution at any time the department deems it necessary or advisable for the protection of the depositors, other creditors, or shareholders thereof. The manner of delivery of such reports or special reports may include such electronic or other type of technologically advanced delivery as may be permitted by the department.

B. The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, cashier, secretary, treasurer, or other managing officer of a corporation, or by one of the firm in the case of a partnership or other unincorporated association, or by the banker if an individual or in such other manner as may be provided by the department. In the case of a corporation, the report shall also be attested as correct by the signatures of at least three of its directors or trustees or in such other manner as may be provided by the department.

(C deleted by amendment Dec. 9, 2002, P.L.1604, No.209)

(D deleted by amendment Dec. 9, 2002, P.L.1604, No.209)

E. (1) Any institution which fails to make or publish any report, or to furnish any proof of publication, in accordance with the provisions of this section, shall pay to the department a penalty of one hundred dollars for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any institution from the payment of such penalty, in whole or in part, if good cause be shown to it for the failure of such institution to file or publish the report or to furnish proof of publication thereof.

(2) Notwithstanding any licensing statute to the contrary, if a licensee licensed under any respective licensing statute within the department's jurisdiction to enforce fails to notify the department in writing received by the department within ten days of relocating the licensee's licensed office that the licensee has relocated such licensed office to a location stated by the licensee, then the licensee shall pay to the department a fine up to a maximum of two thousand dollars (\$2,000.00) per violation for failing to timely notify the department of such change of licensed office location. For the purposes of this subsection, the term "licensing statute" means any State law pursuant to which the department may grant a license.

(3) If an institution or licensee fails to pay a penalty from which it has not been relieved, the department may, through the Office of Attorney General or its authorized designee, maintain an action at law to recover it, together with any

additional costs incurred by the department or the Office of Attorney General or its authorized designee.

(403 amended Dec. 9, 2002, P.L.1604, No.209)

Section 404. Disclosure of Information.--A. The department may divulge to an institution, or to any officer, or any director, trustee or attorney thereof, any information contained in or ascertained from an examination or investigation of such institution made by the department. Reports of examination issued by the department remain the sole property of the department. A report of examination issued by the department to an institution is strictly confidential. Any copy of a report of examination is and shall remain the property of the department and is furnished to the institution, subject to the express condition that it shall be returned to the department immediately upon a request from the secretary. If a subpoena or other legal process is received calling for production of such a report of examination, or any portion thereof, the department shall be notified immediately by the institution. Under no circumstances shall the institution or any of its directors, trustees, officers or employes make copies of the report of examination or any portion thereof available to any organization or person who is not officially connected with such institution as a director, trustee, officer, attorney or employe without the prior written approval or nonobjection of the department. Notwithstanding the foregoing, an institution may disclose the existence and contents of an order or other enforcement action issued to it by the department to the extent required by applicable Federal securities law or State securities law.

B. The department, on the written request or consent of any institution, authorized in the case of corporations by the president or senior executive officer of the institution, may discuss with any person or persons selected by the department, or selected by such institution and approved by the department, any matters relating to the financial condition of such institution.

C. The department, by itself and in its reasonable discretion for regulatory or enforcement purposes, or on the written request or consent of any institution, authorized in the case of corporations by the president or senior executive officer of the institution, may furnish to the Federal Reserve Board, to the Federal Reserve Bank of the district in which the place of business of any institution is located, or to any agency or instrumentality of the United States government, or of the Commonwealth of Pennsylvania, or any other supervisor of financial institutions in another state, any information in its possession relating to such institution.

D. The department may, from time to time, with the approval of the Governor, cause to be published a summary of the condition of institutions under its supervision, containing such information in relation to such institutions as in its judgment is desirable.

E. Neither this section nor any other statute or regulation shall be construed to require the department to publish or divulge any such information under this section, when in the opinion of the department such publication or divulgement is undesirable.

F. Notwithstanding any of the foregoing provisions of this section, the department may enter into such cooperative, coordinating and information-sharing agreements with any other Federal and State banking, insurance or securities regulatory agencies or do so by, with and through any trade association

of such agencies, with respect to any examination, supervision, enforcement, criminal referral, consumer complaints or any other regulatory matters related to institutions, including credit unions, trust companies and licensees, as may be reasonably necessary or appropriate, as determined in the discretion of the secretary. The department may enter into joint examinations or joint enforcement actions with any other Federal or state banking regulatory agency or any insurance or securities regulatory agency having concurrent jurisdiction over any person or entity lawfully or unlawfully engaging in the business of a depository institution, trust company, credit union or licensee as may be reasonably necessary and appropriate in the discretion of the secretary.

G. This section also applies to credit unions and licensees. (404 amended Dec. 9, 2002, P.L.1604, No.209)

Section 405. Criminal History Record Information.--A. For the purposes of this section, a "covered individual" has the following meanings:

(1) Any individual or owner of a sole proprietorship that initially applies to the department for any kind of a covered license under a licensing statute or any individual that controls such an individual or sole proprietorship, or any branch office manager or other employe of such an individual or sole proprietorship who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.

(2) Any individual who owns thirty per centum or more of any type or class of stock or other ownership interest in a business corporation that initially applies to the department for a covered license, or, with respect to a trust company, ten per centum of such stock or other ownership interest, or any chief executive officer, president, chief financial officer, chief operating officer, corporate secretary, corporate treasurer, or other senior level executive of such business corporation, or any junior level executive of such business corporation that participates in the conduct of such business corporation's affairs that are related to such business corporation's activity in Pennsylvania, or any branch office manager or other employe of such business corporation who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.

(3) Any individual with any kind of ownership or membership interest in a noncorporate entity that initially applies to the department for a covered license under a licensing statute, or any officer of any business corporation or noncorporate entity with any kind of ownership or membership interest in another noncorporate entity, or any branch office manager or other employe of a noncorporate entity that applies to the department for a license under a licensing statute who will engage in activity that will be subject to a licensing statute, provided that such activity is not solely back office functions or clerical work.

B. For the purposes of this section, a "covered license" means a license the department may grant pursuant to any licensing statute, or the articles of incorporation of a trust company under the act of November 30, 1965 (P.L.847, No.356), known as the "Banking Code of 1965." (B amended July 8, 2008, P.L.827, No.58)

C. For the purposes of this section, "national criminal history record information" means criminal history records maintained by the Federal Bureau of Investigation Criminal

Justice Information Services Division consistent with the act of October 25, 1972 (Public Law 92-544, 86 Stat. 1115).

D. For the purposes of this section, "noncorporate entity" means an association, joint venture or joint stock company, partnership, limited partnership, limited partnership association, nonprofit corporation, professional corporation or any other group of individuals, however organized.

E. For the purposes of this section, "licensing statute" means the "Mortgage Bankers and Brokers and Consumer Equity Protection Act," the "Secondary Mortgage Loan Act," the "Consumer Discount Company Act," the "Motor Vehicle Sales Finance Act," the Money Transmission Business Licensing Law, the "Check Cashier Licensing Act," the "Pawnbrokers License Act," any other statute pursuant to which the department may grant a license or the "Banking Code of 1965" only insofar as it relates to the business of a trust company.

F. (1) In connection with any initial application submitted to the department for a covered license, a covered individual shall submit his or her fingerprints to the department or to such other international, Federal, State or local government agency, or designee thereof, selected by the department, including the Pennsylvania State Police and the Federal Bureau of Investigation, in order for the department to receive criminal history record information from any international, Federal, State or local government agency, or designee thereof, including criminal history record information from the Pennsylvania State Police or national criminal history record information from the Federal Bureau of Investigation. The department shall send or receive such criminal history record information or national criminal history record information to or from the Pennsylvania State Police, the Federal Bureau of Investigation or any other international, Federal, State or local government agency, or designee thereof, in a manner that is satisfactory to the department. National criminal history record information received by the department shall be handled or maintained in accordance with Federal Bureau of Investigation policy.

(2) Any individual who was not a covered individual at the time an application for a covered license was submitted to the department, but who later occupies a position that would have made that person a covered individual at the time an application for a covered license was submitted to the department, shall comply with all of the requirements of paragraph (1) at the time an application to renew an existing covered license is submitted to the department, or, with regard to a trust company, at any time designated by the department.

G. During the initial or renewal license application process, the department may deem the license application as incomplete and therefore not commencing the review period stated in the respective licensing statutes if the department has not received evidence from the applicant that national criminal history record information and other criminal history record information required under this section has been requested from the Federal Bureau of Investigation for national criminal history record information, or the Pennsylvania State Police or any other international, Federal, State or local governmental agency or designee thereof for criminal history record information.

H. Notwithstanding any other law to the contrary, the department may suspend its processing and consideration of any initial or renewal license application submitted to the department under a licensing statute unless and until the

department receives any and all national criminal history record information from the Federal Bureau of Investigation, criminal history record information from the Pennsylvania State Police, or criminal history record information from any other international, Federal, State or local government agency responsible for such recordkeeping. If the department does not receive the criminal history record information, including national criminal history record information, required under this section, then the department may deny the initial or renewal license application.

I. Notwithstanding the foregoing provisions of this section, the department's approval or denial of a covered license application under a licensing statute without the department receiving criminal history record information or national criminal history record information regarding covered individuals as required under this section shall not prohibit the department from taking any action authorized by law, including suspension or revocation of such a license. In addition, the department may deny a covered license application or suspend or revoke a covered license based on the contents of criminal history record information, or the untimely receipt or failure to provide criminal history record information, or misleading or inaccurate information provided by the applicant or covered individual, pursuant to this section, any licensing statute and other applicable law including 18 Pa.C.S. Ch. 91 (relating to criminal history record information).

J. The cost of any criminal history record information, including national criminal history record information, obtained by the department pursuant to this section shall be paid by the initial or renewal license applicant or the individual whose criminal history is being checked.

K. The provisions of 18 Pa.C.S. § 9121(b)(2) (relating to general regulations) shall not apply to national criminal history information or other criminal history information requested or received under this section. (K added July 8, 2008, P.L.827, No.58)

(405 added Dec. 9, 2002, P.L.1604, No.209)

ARTICLE V

ACTION BY DEPARTMENT AFTER OFFENSES BY, OR CHANGES IN CONDITION OF, INSTITUTIONS

Section 501. Orders by Department.--A. Whenever it shall appear to the department that any institution is violating any provision of its charter, or of this act, or of any other law regarding the business of such institution, or that such institution is conducting business in an unsafe or unsound manner, the department may issue a written order, under the seal of the department, directing such institution to discontinue, within such period as shall be specified in the order, such violation of law or such unsafe or unsound practice.

B. Whenever it shall appear to the department that an officer or employe of an institution, and in the case of an incorporated institution, a director or trustee thereof, has violated any law or order relating to such institution, or has engaged in any unsafe or unsound practice or breach of fiduciary duty in conducting the business of such institution, the department may issue an order directing such officer, employe, director, or trustee to appear on the day fixed in such order before the department and show cause why he should not be removed from his office or position at such institution and such office or position declared vacant. A copy of such order

shall be sent to the institution of which such person is an officer, employe, director, or trustee.

The office or position of any officer, employe, director, or trustee, so ordered by the department to appear, who does not appear on the day fixed in such order, shall, unless the date for his appearance shall previously have been extended by the department, upon such failure to appear, be declared vacant.

On the day fixed in the department's order such officer, employe, director, or trustee shall be heard, in person or by counsel, by the department. If, after such hearing, it shall appear to the department that such officer, employe, director, or trustee has not shown cause why he should not be removed from his office or position at such institution and such office or position declared vacant, the department shall, within sixty days of such hearing, issue an order removing such officer, employe, director, or trustee from his office or position, and declare such office or position vacant. A copy of such order shall be sent to the officer, employe, director, or trustee so removed.

The department shall set forth in its order the date upon which any such removal and declaration of vacancy shall become effective.

The department may immediately suspend any officer, employe, director or trustee of an institution from his or her position at the institution and from any further participation in the conduct of the institution if, in the opinion of the department, the institution or its shareholders or depositors have suffered or may suffer any significant financial harm or other prejudice by the officer, employe, director or trustee's continued involvement in the affairs of the institution. To suspend an officer, employe, director or trustee immediately, the department shall provide a notice containing a statement of the facts constituting grounds for removal and shall state a time and place for a hearing. The hearing shall be fixed for a date between thirty days and sixty days from the date of service of notice unless an earlier or later date is set by the department at the request of the affected officer, employe, director or trustee.

If the institution, of which such person, ordered by the department to appear is an officer, employe, director, or trustee, is an interstate bank or is a member of a Federal Reserve Bank, the Federal Deposit Insurance Corporation or the Federal Home Loan Bank, the department may notify such Federal Reserve Bank, Federal Deposit Insurance Corporation, Federal Home Loan Bank, or other bank supervisory agencies having jurisdiction over an interstate bank, as the case may be, of its order directing such officer, employe, director, or trustee to appear before the department and of its decisions issued in such a case. At such hearing, any duly authorized representative of such Federal Reserve Bank, Federal Deposit Insurance Corporation, Federal Home Loan Bank or other bank supervisory agencies having jurisdiction over such interstate bank, as the case may be, may appear as a witness.

Except as otherwise specifically provided in this act, the proceedings of the department and its decisions regarding institutions shall not be published or divulged to anyone.

Any officer, employe, director, or trustee, who is removed from his office or position as provided in this section, shall thereafter be disqualified from acting as an officer, employe, director, or trustee of any institution, credit union or licensee in this Commonwealth, for such period as the department shall prescribe.

(B amended Oct. 24, 2012, P.L.1396, No.171)

C. In connection with any hearing or investigation authorized by this act or by any other law, the department shall have, in addition to the authority provided by any other law, power to issue subpoenas, requiring the attendance of or the production of pertinent books, papers, electronic data or information of any kind in any form, by the officers, directors, agents, employes, or members, respectively, of any corporation or person which the department is authorized under the provisions of this act or any other law of this Commonwealth to examine. The department shall also have power to issue subpoenas to any person or entity provided that the information from such person or entity is necessary for the enforcement of this act or any other law within the jurisdiction of the department. The department may, upon application of the attorney, officer, employe, director, or trustee to be heard, subpoena such witnesses as are set forth in such application. The department shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers. In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from the Commonwealth Court requiring the person to produce the requested information.

Any witness who refuses to obey a subpoena, issued under this section, or who refuses to be sworn or affirmed or to testify, or who is guilty of any contempt, after summons to appear, may be punished as for contempt of court, and for this purpose, an application may be made to the Commonwealth Court or to any court of common pleas, within whose territorial jurisdiction the offense was committed, for which purpose such court is hereby given jurisdiction.

(C amended Dec. 9, 2002, P.L.1604, No.209)

D. Whenever it shall appear to the department that the capital of a corporation under its supervision has been impaired, or the capital and surplus reduced below the minimum required by law or below the amount required by its articles of incorporation, the department may issue a written order, under the seal of the department, directing such corporation to make good the deficiency within such period as shall be specified in the order.

E. Whenever it shall appear to the department that the bond or securities of a person under its supervision, which are required by law to be deposited with the department, have depreciated in value so that their present value is below the minimum amount required by law, the department may issue a written order, under the seal of the department, directing such person to make good the deficiency within such period as shall be specified in the order.

F. Whenever it shall appear to the department that any institution is not keeping its books and accounts in such manner as to enable the department, with reasonable facility, to ascertain the true condition of the institution, the department may issue a written order, under the seal of the department, requiring such institution, within such period as shall be specified in the order, to open and keep such books as the department may, in its discretion, reasonably determine are essential for the purpose of keeping accurate and convenient records of the transactions and accounts of such institution.

G. Whenever any institution shall refuse to submit its records and affairs to a legally conducted examination or investigation by the department, the department may issue a written order, under its seal, requiring such institution to

permit the secretary, or other duly authorized examiner, to make such examination or investigation, within such period as shall be specified in the order.

H. The department may impose a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation against an institution, or any officer, employe, director or trustee of an institution, for a violation of any law or order relating to the institution or for any unsafe and unsound practice or breach of fiduciary duty in conducting the business of the institution. (H added Oct. 24, 2012, P.L.1396, No.171) (501 amended Apr. 22, 1937, P.L.337, No.96)

Compiler's Note: Section 1602(b)(1) of Act 345 of 1967 provided that section 501 A, B and C are repealed insofar as they are applicable to savings associations, savings and loan associations and building and loan associations.

Compiler's Note: Section 2202 of Act 356 of 1965 provided that section 501 B and C are repealed as to the Banking Board to the extent it is inconsistent with Act 356.

Section 502. Enforcement of Department's Order by Court.--Whenever a person, institution, credit union, licensee or other entity of any kind whatsoever shall not comply with the terms of an order of the department which has been properly issued under the circumstances pursuant to this act or any other law, the department, upon notice to the person, institution, credit union, licensee or entity, may, in addition to the authority provided by any other law, through the Office of Attorney General, petition the Commonwealth Court for an order directing the institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits, it shall appear that the order of the department was lawfully issued, the court shall grant the petition of the department.

(502 amended Dec. 9, 2002, P.L.1604, No.209)

Section 503. Quo Warranto or Injunction Proceedings; Conduct of Administrative Proceedings Relating to Institutions and Credit Unions.--(Hdg. amended July 8, 2008, P.L.827, No.58) A. (A deleted by amendment Dec. 9, 2002, P.L.1604, No.209)

B. When any institution violates any provision of its articles of incorporation, and refuses to obey a lawfully issued order of the department that it cease such violation, the department may notify the Office of Attorney General of these facts, and the Office of Attorney General may then institute quo warranto proceedings against such corporation or other type of institution, in the manner provided by law.

C. The department may maintain an action in Commonwealth Court or any other court of competent jurisdiction for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act or any other statute or regulation within the department's jurisdiction to administer or enforce.

D. This section pertains to institutions and credit unions. Subsection C is applicable to institutions, credit unions and licensees.

E. (1) All administrative proceedings conducted by the department pertaining to institutions, including credit unions, shall be subject to the requirements of 2 Pa.C.S. (relating to administrative law and procedure). For purposes of this subsection, the term "administrative proceeding" means any proceeding other than a judicial proceeding, the outcome of

which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to an institution or credit union. The provisions of this subsection shall supplement and not repeal or limit requirements of 2 Pa.C.S.

(2) Notice regarding the receipt of any application or notice submitted to the department by an institution or credit union relating to the issuance, amendment or conversion of a charter, or an absorption, acquisition, consolidation or dissolution, shall be published by the department in the Pennsylvania Bulletin. Whenever the department publishes notice in the Pennsylvania Bulletin, the department may direct an institution or credit union submitting an application or notice to also publish notice in a newspaper of general circulation regarding its request.

(3) Comments in support or opposition to applications or notices published pursuant to paragraph (2) shall be considered by the department if submitted to the department within thirty days of the publication in the Pennsylvania Bulletin and/or newspaper of general circulation, whichever is later. The department may, for good cause, extend or shorten the thirty-day deadline for the submission of comments.

(4) An institution or credit union submitting an application, notice or other document; a person submitting comments in support or in opposition to any application or notice to the department; any other person submitting a document to the department regarding any matter subject to its jurisdiction; or the department may designate all or portions of a document to be confidential to the extent the document contains trade secrets, confidential proprietary information or other privileged or confidential information the disclosure of which would cause substantial harm to an institution, credit union or person or impair the safety or soundness of an institution or credit union.

(5) If any portion of an application, notice or other document submitted to the department is designated as confidential pursuant to paragraph (4), the thirty-day deadline for the submission of comments provided by paragraph (3) may be extended until the department reviews any such confidentiality designations and determines the extent to which all or any portion of a document shall be deemed confidential. Notwithstanding the requirements of sections 302 and 404, any portions thereof not designated or determined to be confidential by the department pursuant to paragraph (4) shall be made available for review by any interested person. Except for a person designating all or a portion of a document as confidential pursuant to paragraph (4), no other person may contest a decision by the department to designate or not designate all or portions of such documents as confidential, unless the department is required by 2 Pa.C.S. to conduct a hearing requested pursuant to paragraph (7).

(6) Notwithstanding any other law to the contrary, notice regarding final action taken by the department regarding any application or notice for which notice is published pursuant to paragraph (2) shall be published by the department in the Pennsylvania Bulletin.

(7) Any institution or credit union subject to an order, decree, decision, determination or ruling issued by the department and published pursuant to paragraph (6) or any other institution or credit union directly affected by the department's action which would be entitled to a hearing regarding the department's action pursuant to 2 Pa.C.S.,

including a federally chartered bank, savings association or credit union, may request a hearing to review the department's action within fourteen days of the publication or receipt of notice of the department's final action. The filing of a request for a hearing regarding a final action taken by the department shall not be deemed to automatically stay the department's action, but the department may, for good cause, grant a supersedeas of its action pending the outcome of an administrative proceeding. Where the department publishes notice of the receipt of an application under paragraph (2) or an institution or credit union has notice of the department's receipt of an application, notice or other request that the department issue an order, decree, decision, determination or ruling, an institution or credit union directly affected by the department's final action, other than the institution or credit union subject to the department's action, may not request a hearing to review the department's final action unless the institution or the credit union submitted comments pursuant to paragraph (3).

(8) Notwithstanding the requirements of sections 302 and 404, if a hearing is conducted by the department pursuant to 2 Pa.C.S., the hearing officer may review and revise determinations made by the department to classify all or any portion of an application, notice or document as confidential and may disclose to a party participating in the hearing all or any portions thereof determined to be confidential pursuant to a protective order limiting or restricting access to and the use of such documents. If the hearing officer determines that a protective order cannot adequately protect the interests of an institution, credit union or person subject to the supervision of the department or of another person participating in a hearing, the hearing officer may redact confidential portions or deny access to any documents pursuant to the standards customarily employed by courts of this Commonwealth.

(9) The department may adopt regulations to implement this subsection. Any regulations adopted by the department in effect upon the effective date of this subsection are hereby repealed to the extent inconsistent with this subsection.

(E added July 8, 2008, P.L.827, No.58)

(503 amended Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 1602(b)(1) of Act 345 of 1967 provided that section 503 A and C are repealed insofar as they are applicable to savings associations, savings and loan associations and building and loan associations.

Compiler's Note: Section 2202 of Act 356 of 1965 provided that section 503 A and C are repealed as to banks, bank and trust companies, trust companies, savings banks, private banks and employes' mutual banking associations.

Section 504. Taking of Possession by Department.--A. The department may take possession as receiver, which throughout this act includes the authority to act as conservator, of the business and property of any institution subject to its supervision whenever it shall appear to it that such institution--

(1) Is violating its articles of incorporation, any order of the court issued upon application of the department, any cease and desist or similar order of the department, or any law of the Commonwealth regulating its business; or

(2) Is conducting its business in an unsafe manner; or

(3) Is in an unsafe or unsound condition to transact its business; or

(4) In the case of a corporation, has an impairment of its capital below the minimum required by law or by its articles of incorporation; and in the case of a person, has not made good a depreciation in the value of the bonds or securities deposited with the department below the minimum required by law; or, after due examination of the corporation or person, is determined to be insolvent; or has a substantial dissipation of assets or earnings or any unsafe or unsound practice or for any violation of Federal or State financial law or pertinent regulation; or

(5) Has suspended payment of its obligations, without authority of law; or is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business; or

(6) Has refused to submit its records and affairs to, or its officers or directors have refused to be examined upon oath or affirmation concerning its affairs by, the secretary, or any other duly authorized examiner, in connection with any lawful examination or investigation; or

(7) Requests the department, by its board of directors or its board of trustees in the case of a corporation, and, in the case of a person, by its individual owner or owners, to take possession for the benefit of depositors, other creditors, and shareholders; or

(8) Has assets less than its obligations to its creditors and others, including members of the institution.

B. Prior to the department taking possession, the department shall have full authority to take any action it deems appropriate in anticipation of taking possession of an institution, including, but not limited to, seeking and contacting potential acquirers of part or all of the institution that may be taken into possession and obtaining qualified agents or seeking and contacting potential successor trustees to administer fiduciary accounts.

C. In addition, whenever the secretary in his official capacity is appointed receiver by any court of equity, as provided by law, the department shall take possession of the business and property, and the secretary shall act as receiver, of the institution in the same way and with the same rights and limitations as when the department takes possession in the customary manner provided by this act.

(504 amended Dec. 9, 2002, P.L.1604, No.509)

Compiler's Note: Section 1602(b)(2) of Act 345 of 1967 provided that section 504 B is repealed insofar as it applies to nonfederally insured savings associations.

Section 505. Suits by Department; Jurisdiction of Courts.--This act shall not be construed to limit the right of the department in the course of its supervision of institutions to bring any suit in courts of law or of equity, in pursuance of any remedy permitted by the laws of this Commonwealth, or by those of any other state in which the department brings suit.

Section 506. Implementation of the Consumer Financial Protection Act of 2010.--A. This section applies to matters relating to institutions, credit unions, licensees, national banks, Federal savings associations, foreign financial institutions and other persons subject to the jurisdiction of the bureau doing business in this Commonwealth.

B. The Attorney General is authorized to initiate proceedings before courts of competent jurisdiction to enforce requirements of the Consumer Financial Protection Act or regulations adopted by the bureau to the extent authorized to

do so by sections 1042(a) and 1047 of the Consumer Financial Protection Act (12 U.S.C. §§ 5552(a) and 25b(i)) except that with respect to institutions, credit unions, licensees, foreign financial institutions, national banks, Federal savings associations or their subsidiaries, the Attorney General may initiate proceedings only upon the request of, or with the approval of, the department. If the Attorney General refuses to bring a civil action at the request of the department, the Office of General Counsel may initiate the action on behalf of the Commonwealth.

C. The department is authorized to receive reports of examinations by the bureau as authorized under section 1022(c)(6)(C) of the Consumer Financial Protection Act (12 U.S.C. § 5512(c)(6)(C)) and to enter into agreements with the bureau regarding the coordination of examinations as authorized under section 1025(e)(2) of the Consumer Financial Protection Act (12 U.S.C. § 5515(e)(2)). The reports shall be subject to the requirements of section 302, except that the department may disclose, to the extent permitted by the bureau, the contents of the reports relating to allegations of criminal conduct to the Attorney General.

D. No agency of this Commonwealth, nor political subdivision, may engage in the exercise of visitorial powers with respect to a national bank or Federal savings association, except in a manner consistent with Federal law, including section 1047 of the Consumer Financial Protection Act (12 U.S.C. § 25b(i)), and upon the request of, or as expressly and on a case-by-case basis, authorized by the Office of the Comptroller of the Currency.

E. The department, to the extent otherwise authorized by the laws of this Commonwealth, may engage in the exercise of visitorial powers with respect to institutions, credit unions, licensees, foreign financial institutions or their subsidiaries, or with respect to the subsidiaries of national banks or Federal savings associations.

F. Nothing in this section may prevent an agency of this Commonwealth, or political subdivision, from engaging in a civil investigation, administrative enforcement action, examination, information collection or any other administrative proceeding or commencing civil proceedings before a court of competent jurisdiction to determine compliance with or enforce a statute of this Commonwealth, a regulation or order of a Commonwealth agency, an ordinance or resolution of a political subdivision or a Federal law or regulation, to the extent authorized by Federal law, not relating to or incidental to the banking or financial activities, operations or condition of an institution, credit union, licensee, national bank, Federal savings association or foreign financial institution and not otherwise preempted by Federal law, but prior to doing so, the agency or political subdivision shall give notice and consult with the department. To the extent the department determines that such actions may affect the banking or financial activities, operations or condition, including safety and soundness, of any institution, credit union, licensee, national bank, Federal savings association, foreign financial institution or a subsidiary of the foregoing; or interfere with the regulation of such entities by the department, Federal regulatory agencies or regulatory agencies of other states, the department shall have sole and exclusive jurisdiction to initiate or participate in administrative proceedings, or to request that the Attorney General initiate or participate in judicial proceedings, to

enforce such laws or to determine that such proceedings are not in the public interest.

G. Powers and responsibilities granted to the department by this section may not be exercised by any other agency of the Commonwealth, or political subdivision, except upon the request of the department, or as expressly authorized by the department on a case-by-case basis.

H. Nothing in this section may limit or restrict the power of the Attorney General or law enforcement agencies of municipalities to commence criminal proceedings.

I. Consumer financial laws of this Commonwealth not preempted by Federal law pursuant to section 1044 or 1046 of the Consumer Financial Protection Act (12 U.S.C. §§ 256 and 1461) or other provision of Federal law, including statutes, regulations adopted by Commonwealth agencies, orders issued by Commonwealth agencies, ordinances or resolutions enacted by political subdivisions or orders issued by political subdivisions, shall apply to national banks, Federal savings associations and their subsidiaries, only to the extent those laws apply to State-chartered banks and savings associations and their subsidiaries.

J. Consumer financial laws of this Commonwealth applicable to the activities of foreign financial institutions and their subsidiaries, including statutes, regulations adopted by Commonwealth agencies, orders issued by Commonwealth agencies, ordinances or resolutions enacted by political subdivisions or orders issued by political subdivisions, shall apply to foreign financial institutions and their subsidiaries, only to the extent those laws apply to State-chartered banks and savings associations and their subsidiaries.

K. The following terms shall be construed in this section to have the following meanings, except in those instances where the context clearly indicates otherwise:

"Bureau." The Federal Bureau of Consumer Financial Protection.

"Consumer Financial Protection Act." Title X of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Public Law 111-203, 12 U.S.C. § 5301 et seq.) or the Consumer Financial Protection Act of 2010.

"Foreign financial institution." A person licensed, registered or regulated by a state other than the Commonwealth or a foreign country that provides financial services to or for the benefit of persons in this Commonwealth.

"State." Any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa or the United States Virgin Islands or any federally recognized Indian tribe as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103-454, 25 U.S.C. § 479a-1(a)).

"Visitorial powers." The conduct of a civil investigation, administrative enforcement action, examination or any other administrative proceeding, or a request for a report or information, to determine compliance with or enforce a statute of this Commonwealth, a regulation or order of a Commonwealth agency, an ordinance or resolution of a political subdivision or a Federal law or regulation relating or incidental to the banking or the financial activities, operation or condition of an institution, credit union, licensee, national bank, Federal savings association or foreign financial institution.

(506 added Oct. 24, 2012, P.L.1396, No.171)

ARTICLE VI
TAKING OF POSSESSION BY SECRETARY AS
RECEIVER AND SURRENDER THEREOF

Section 601. Taking Over Possession by Secretary as Receiver.--Whenever the department takes possession of the business and property of an institution, including a foreign bank office licensed by the department, the secretary shall, by operation of law, simultaneously take over such possession from the department and become receiver of such institution, subject to the provisions of this act. His official title, when thus in possession of the business and property of an institution, shall be receiver of such institution. The secretary may act as receiver without bond.

(601 amended Dec. 9, 2002, P.L.1604, No.209)

Section 602. Posting of Notice of Possession.--The secretary, upon taking possession of the business and property of an institution as receiver, shall post notice of such fact on the front door of the institution.

Section 603. Notice to Insurance Commissioner.--Whenever the secretary shall become receiver of an institution which engages in the business of insuring titles or guaranteeing bonds secured by mortgages, or which transacts any other business which is subject to the supervision of the Insurance Department, he shall inform the Insurance Department that he has taken possession of the business and property of such institution.

Section 604. Certificates of Possession; Filing; Title To and Liens Against Real Property; Supplements to Certificate of Possession to Surrender or Transfer Receivership.--A. The secretary, upon taking possession of the business and property of an institution as receiver, shall forthwith, under the seal of the department, prepare in duplicate a certificate, to be known as the certificate of possession, setting forth that he has become receiver of the institution. It shall state the name of the deputy receiver whom the secretary, pursuant to the provisions of this act, appoints to take charge of the affairs of the institution, and shall set forth the duties which he delegates to such deputy receiver. If the secretary does not appoint a deputy receiver prior to the date of the filing of the certificate of possession, or if he appoints a new deputy receiver or an additional one, or if he adds to the duties of the deputy receiver, he shall prepare, in duplicate, and file a supplement to the certificate of possession.

B. The secretary shall file the original certificate of possession and the original of any supplement thereto in his office in Harrisburg, and the duplicate certificate of possession and the duplicate of any supplement thereto in the office of the prothonotary. The certificate of possession filed in the prothonotary's office, and any supplement thereto, shall be listed in the judgment index in the name of the institution as defendant and of the secretary as plaintiff.

C. The certificate of possession filed with the prothonotary shall constitute valid evidence that any real property owned by or upon which there is a lien which belongs to the institution has come into possession of the receiver as of the date specified therein.

D. The receiver shall file with the prothonotary a supplementary certificate of possession stating when the receiver has transferred or surrendered possession of the institution to another entity and stating the entity's name, address and telephone number.

(604 amended Dec. 9, 2002, P.L.1604, No.209)

Section 605. Injunction to Restrain Secretary.--Any institution of whose business or property the secretary has taken possession as receiver, may, at any time within ten days after the secretary has become receiver, apply to the court for an order requiring the secretary to show cause why he should not be enjoined from continuing as receiver. Service may be made in such action by serving the secretary personally, or by leaving a copy with the deputy in charge of his office in the department, or by serving the deputy receiver appointed by the secretary to manage the affairs of such institution. The court shall, after a hearing upon the merits, either dismiss the application or order the secretary to surrender to the institution possession of its business and property, but no such injunction shall issue where the secretary has been appointed receiver by action of a court of competent jurisdiction, or by action of the institution itself, in accordance with the provisions of this act.

Section 606. Power of Courts to Appoint Receivers.--(606 repealed Dec.9, 2002, P.L.1604, No.209)

Section 607. Taking of Possession upon Request of Institution.--No institution shall make a general assignment of its business and property for the benefit of its creditors by the appointment of an assignee or a trustee, or otherwise. In lieu of the power to make an assignment for the benefit of creditors, an institution may request the department to take possession in the regular manner provided by law. In such cases, the department may take possession or may take other action deemed appropriate in its discretion, and the secretary may take over such possession and become receiver, in the same manner and subject to the same provisions of this act as when the department takes possession of the business and property of an institution without the request of such institution, unless the secretary determines that the Federal Deposit Insurance Corporation or other appropriate banking agency should take possession and such agency agrees to do so.

(607 amended Dec. 9, 2002, P.L.1604, No.209)

Section 608. Surrender of Possession; Special Liquidations and Reorganizations.-- The secretary may, upon conditions approved by him, surrender possession of an institution of which he has taken possession as receiver, at any time prior to final liquidation and distribution, under the following circumstances:

(1) He may surrender possession to the institution itself when he finds it to be in a safe and sound condition to resume its business;

(2) He may surrender possession to the institution itself when he is without funds to liquidate its business and property. In such case, the secretary shall first accord to the shareholders, and the depositors or other creditors of the institution, a period of not less than two weeks in which to advance sufficient funds for the secretary to liquidate the business. Where such funds are advanced, they shall be considered an expense of administration and shall be given the same preference in the distribution of assets as any other expenses of administration. Where possession has been surrendered to an institution under such circumstances, the institution may not conduct any business except the liquidation of the assets. In the distribution of any moneys realized by the institution on its assets, it shall follow the same order and preference as is established by this act for distribution by the secretary of the assets of an institution of which he is in possession as receiver. Upon the approval of his account by the court, and upon the filing of the supplement to the

certificate of possession, pursuant to the provisions of this section, the secretary shall be relieved of all duties with reference to such institution. However, if the department shall deem it advisable to resume possession of the institution at any time, it may do so in the same manner as is provided for the taking possession of any institution, in which case the secretary shall again take over possession and become receiver, with all the rights, powers, and duties granted to, or imposed upon the secretary, as receiver, by this act.

(3) He may surrender to the institution itself, or to any other corporation or person, possession of all or part of the business, property, moneys, credits, or other assets of the institution of which he is in possession as receiver to permit to be carried into effect a special plan of liquidation, reorganization, or rehabilitation which has been approved by the court and by (a) depositors and other creditors of the institution, to whom is due a majority in amount, regardless of the number, of the claims stated in writing by the secretary to be due to depositors and other creditors of such institution, and (b) the holders of a majority of the shares of stock of such institution, if a corporation, except that in the case of a savings association, the approval of the holders of eighty per cent of the shares of stock of such corporation shall be required.

However, the secretary shall not authorize any decrease of capital by a corporation affected by the provisions of this section, except upon compliance by such corporation with the provisions of law as to such decrease.

(608 amended Dec. 9, 2002 P.L.1604, No.209)

ARTICLE VII
RIGHTS, POWERS, AND DUTIES OF SECRETARY
AS RECEIVER

Section 701. Status of Secretary as Receiver.--A. Except as otherwise provided in this act, the secretary, when he has taken possession of the business and property of an institution, shall be responsible to the court in which the certificate of possession is filed. His rights, powers, and duties shall be those of a general receiver appointed by any court of equity in this Commonwealth, except as such rights, powers, and duties are increased or limited by the provisions of this act. The secretary as receiver may act as a conservator of the institution. He shall be vested, in his official capacity, with all the rights, titles, privileges, powers, and duties of such institution and of any shareholder, member, account holder, depositor, officer or director of such institution with the title or the right to possession of all property to which the institution has title or the right to possession, including debts due, and liens and other security therefor and ownership of the books, records and assets of any previous legal custodian of such institution; and with the institution's rights of action or redemption. This shall be so whether such property and debts due, such liens or other security therefor, or such rights of action or redemption, are held in the name of such institution, or in the name of some other corporation or person. He shall have power to execute in his name, as receiver, any instrument incident to the exercise of any power granted to or any duty imposed upon him as receiver of such institution.

The secretary shall be the representative of the creditors of the institution and shall be entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, pledge,

assignment, transfer, conveyance, or encumbrance, which could have been avoided by any of the creditors, or by which one creditor is given an unlawful preference over another.

B. The secretary may, as receiver: (i) exercise all powers and authorities, including all incidental powers as shall be necessary to carry out his enumerated duties; and (ii) take any action which the secretary determines is in the best interests of the institution, its depositors, owners, shareholders, creditors, trust accounts or the Commonwealth of Pennsylvania.

(701 amended Dec. 9, 2002, P.L.1604, No.209)

Section 702. Appointment of Deputy Receivers, Counsel, Independent Receivers and Other Assistants.--A. The secretary may appoint one or more official agents, to be known as deputy receivers, to assist him in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of any institution, or administration of fiduciary accounts of which he has taken possession as receiver. The secretary may delegate to each deputy receiver any duty imposed upon, or any right or power granted to, him as receiver. The secretary may also employ such other assistants as he deems necessary, including such deputy attorneys general, special deputy attorneys general, assistant deputy attorneys general, or other attorneys as may be appointed by the Office of Attorney General and assigned to the secretary for the handling of any legal business pertaining to the affairs or property of such institution. The secretary may also retain to assist him in the management, reorganization, consolidation, liquidation, or distribution, any officer or other employe of the institution of which he has taken possession.

B. (1) On request of the secretary, the court in which the receivership proceeding is pending may appoint an independent receiver, including any appropriate governmental entity, to handle the receivership proceedings consistent with the provisions of this act and may require a suitable bond of the independent receiver. The appointed independent receiver shall have the same status and incidental powers provided to the secretary as receiver in section 701.

(2) If an independent receiver is appointed, the secretary is discharged as receiver from any liability for the acts thereafter of the independent receiver but shall remain a party to the receivership proceeding with the right to terminate such independent receiver upon petition to and approval by the court and, with standing to initiate, contest or participate in any actions involving or related to the receivership at the discretion of the secretary. The views of the secretary are entitled to deference if not contrary to the plain meaning of this article.

(702 amended Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 504 of Act 164 of 1980 provided that section 702 is repealed insofar as it is inconsistent with Act 164.

Section 703. Exercise of Discretion by Secretary.--A. Whenever, under this act, discretion as to whether, or the manner in which, to exercise a power or fulfill a duty is vested in the secretary in possession of an institution as receiver, he shall, after such examination or investigation as shall seem appropriate under the circumstances, take such action as he deems to be the best interests of the depositors or other creditors.

B. The words "the best interests of the estate," whenever used in this act, shall be construed to refer to the best interests of the depositors or other creditors.

(703 amended Dec. 9, 2002, P.L.1604, No.209)

Section 704. Suspension or Continuation of Business.--The secretary is authorized, upon taking possession of the business and property of an institution as receiver, to continue or to suspend the business for such period as he may deem necessary to enable him to determine whether to surrender such possession to the institution, to authorize a merger or consolidation, to seek bids for the purchase of assets and assumption of liabilities of the institution by any State or Federal institution, to liquidate the affairs of such institution, to organize a new institution or to take such other action authorized by law which is in the best interests of the estate. During such period, he shall take any action he deems necessary to conserve the assets and business, or to protect the best interests of the estate. In addition, the secretary may enter into agreements, conditional or otherwise, for the purchase of assets and assumption of liabilities of the institution and take related actions prior to and in reasonable anticipation of such institution being placed into receivership by the secretary or other banking agency.

(704 amended Dec. 9, 2002, P.L.1604, No.209)

Section 705. Determination to Liquidate; Filing of Supplemental Certificates Upon Determination to Liquidate Institution.--The secretary shall, within six months after the date on which he takes possession of any institution as receiver, determine whether or not to liquidate the business and property and distribute the assets of the institution. If he shall determine to liquidate, he shall forthwith, under the seal of the department, prepare, in duplicate, a supplement to the certificate of possession, setting forth this fact. He shall file the original supplement in his office in Harrisburg and the duplicate in the office of the prothonotary. He shall then proceed to liquidate the affairs of the institution with as much dispatch as shall appear to be expedient under the circumstances.

(705 amended Dec. 9, 2002, P.L.1604, No.209)

Section 706. Powers and Duties Before and After Determination to Liquidate.--Except where otherwise specifically provided, all powers and duties granted by this act to the secretary in possession of the business and property of an institution as receiver, may be exercised by him both before and after his formal determination, pursuant to the provisions of this act, to liquidate the affairs of such institution.

Section 707. Inventory and Appraisement.--A. When the secretary has taken possession of the business and property of an institution as receiver, he shall forthwith prepare, in duplicate, a complete and detailed inventory of the assets of such institution. The inventory shall be verified by oath or affirmation of the secretary or other person making it.

B. As soon as expedient after taking possession, the secretary shall cause a complete appraisement of the assets of the institution to be made, in duplicate, under oath or affirmation, by not less than two nor more than three disinterested appraisers selected by him. Such appraisement shall be included upon the same document or documents as the inventory. The value of the assets shall be computed in such appraisement as of the date on which the secretary took possession.

C. The original and duplicate of the inventory and appraisement shall be filed in the office of the secretary in Harrisburg. However, if the secretary shall determine, in accordance with the provisions of this act, to liquidate the affairs of the institution, he shall, immediately after such determination to liquidate, file the duplicate inventory and appraisement in the office of the prothonotary.

Section 708. Issuance of Subpoenas; Questioning of Witnesses.--A. In order to enable the secretary to secure a complete inventory and appraisement, or to carry out any other right, power, or duty, granted to or imposed upon him as receiver by this act, the secretary shall have the power to issue subpoenas requiring the attendance of, or the production of pertinent books and papers by, any officer, director, agent, employe, or member respectively of the corporation or person of which he has taken possession, or any other individual whom the secretary believes to have information of importance regarding the affairs of the institution. He shall also have the power to question such witnesses under oath or affirmation, and to examine such books and papers.

The secretary may delegate to the appraisers appointed by him, or to any other duly authorized agent, the power granted to him as receiver under this section.

Any witness, who refuses to obey a subpoena issued under this section, or who refuses to be sworn or affirmed, or to testify, or who is guilty of any contempt after summons to appear, may be punished, as for contempt of court, by the court in which the certificate of possession of the institution, concerning the affairs of which the witness was subpoenaed, is filed.

B. Every witness called by the secretary or his duly authorized agent, in connection with the affairs of an institution in possession, shall be entitled to the fees and mileage customarily paid to witnesses in the courts of the county in which the institution has its place of business.

Section 709. Power of Court to Make and Enforce Orders.--The court in which the certificate of possession is filed shall sit as a court of equity. It shall have the power, upon petition of the secretary, to make and enforce any appropriate order to enable him, with the utmost dispatch, to discharge his duties in connection with the business and property of any institution of which he has taken possession, as receiver, pursuant to the provisions of this act.

The court shall grant to the party against whom the order is sought the right to appear, within ten days after notice is given, to show cause why the order should not be made. The court shall have the power, at the end of the ten-day period, ex parte if the other party does not appear to show cause, or upon the merits, if the party does appear, to issue the aforementioned order.

Section 710. Notice to Holders of Assets; Power of Court to Order Transfer.--A. Upon becoming receiver of any institution, the secretary shall forthwith give notice in writing of such fact to all corporations and persons having custody or possession of any assets or other property which the institution of which he is receiver owns or to which it has the right to possession or custody for any purpose whatsoever. Such notice shall be given at the addresses which appear for such corporations and persons upon the records of the institution or, if none appear there, then at their last known addresses. However, if it shall appear to be in the best interests of the institution, the court may order the secretary to substitute a

single advertisement in a newspaper or newspapers for the individual notice to the corporations and persons. (A amended Dec. 9, 2002, P.L.1604, No.209)

B. The court shall have the power, upon petition of the secretary, to order any corporation or person which has custody or possession of assets or other property to which such institution shall have the right of custody or possession, for any reason whatsoever, to transfer or convey such property to the secretary and to execute and deliver any instrument necessary to accomplish that purpose.

The court shall grant to such corporation or person the right to appear, within ten days after notice is given, to show cause why the order should not be made. The court shall have the power, at the end of the ten-day period, to issue the aforementioned order, ex parte if the corporation or person does not appear to show cause, or upon the merits, if the corporation or person does appear. dispatch as shall appear to be expedient under the circumstances.

Section 711. Sale of Assets Repledged by Institution; Repledge after Possession.--A. Where assets belonging to others, shall be pledged or given as collateral by an institution of which the secretary subsequently takes possession as receiver, and the pledgee has actual knowledge at the time of the pledge that the assets are not assets of the institution, such pledgee shall not forfeit or sell any such collateral or pledged assets, after the secretary has taken possession, without the written permission of the secretary, any provision in any collateral note or agreement to the contrary notwithstanding; but if the secretary refuses such permission, the pledgee may, after notice to the secretary, petition the court for leave to sell such assets. The court may, after giving the pledgee and the secretary an opportunity to be heard, grant such leave, or it may make such other order as it deems to be in the best interests of all parties concerned.

However, if the assets so pledged by any such institution are accompanied by the obligation of the corporation or person owning them, the pledgee shall have the power to exercise all the rights, powers, and privileges contained in such obligation held by such pledgee, including the sale of the assets.

(A amended Dec. 9, 2002, P.L.1604, No.209)

B. Where assets belonging to an institution of which the secretary has taken possession as receiver have been pledged or given as collateral by such institution, or where assets belonging to others shall have been pledged or given as collateral by an institution of which the secretary subsequently takes possession as receiver, and the pledgee does not have actual knowledge at the time of the pledge that such assets are not assets of the institution, such pledgee may forfeit or sell any such collateral or pledged assets, after the secretary has taken possession, in accordance with the right of such pledgee under the agreement under which such assets or collateral were pledged.

C. The secretary shall not repledge any assets held by an institution of which he is in possession, in pledge or as collateral, but belonging to other corporations or persons, unless such repledge is accompanied by the obligation of the original borrower from the institution and is for an amount not exceeding the amount of the original obligation due at the time the collateral is repledged.

Section 712. Liens, Judgments, and Executions; Assignments of Claims.--A. The status of all parties shall become fixed on the date the secretary takes possession of the business and

property of the institution, as receiver. No corporation or person shall thereafter acquire any lien or charge against any of the assets of the institution of which the secretary is receiver, including mechanics' liens for charges, payments, advances, or clearances thereafter made or thereafter incurred, or liens by reason of the entry of any judgment against such institution after the secretary has taken possession.

B. In the case of an institution, of which the secretary has taken possession, the claims of depositors shall be subrogated in favor of the Federal Deposit Insurance Corporation to the extent that the Federal Deposit Insurance Corporation makes available, pursuant to applicable laws of the United States, for payment, the claims of such depositors: Provided, That the rights of such depositors to participate in and receive dividends or other distributions upon that portion of their claims not made available for payment shall not be affected by such subrogation. When the claims of depositors have been made available for payment, in whole or in part, by the Federal Deposit Insurance Corporation, the secretary shall file a partial or final account, in the manner required by this act, of his administration of the business and property of the institution. (B amended Dec. 9, 2002, P.L.1604, No.209)

C. Assignments of claims of depositors or other creditors of the institution, which are made before the secretary takes possession but notice of which is not received by the institution before such taking of possession, shall be regarded as, and shall have only the legal incidents of, assignments made after the secretary takes possession.

D. No execution or attachment, pending or otherwise, shall respectively issue, or be proceeded with, against any property, moneys, or assets, owned by, or legally in the custody or possession of, an institution of which the secretary is in possession as receiver. A plaintiff may proceed as follows: He may give written notice of his claim to the secretary, or to the deputy receiver of such institution, and he shall thereafter present proof in the regular manner provided by this act for the proof of the claim, which he is attempting to attach. After the filing of the regular account of the secretary, the court shall adjudicate the matter as in the case of other disputed claims. (D amended Dec. 9, 2002, P.L.1604, No.209)

(712 amended Jul. 2, 1935, P.L.525, No.202)

Section 713. Actions and Suits by and against Secretary.--A.

For the purpose of executing any of the powers and performing any of the duties respectively conferred or imposed upon him, as receiver, by this act, the secretary may, in his name as receiver of such institution, prosecute any action at law or in equity in any court of this Commonwealth or of any other state, whether or not such action is pending on behalf of the institution at the time he takes possession. He may likewise similarly defend any action at law or in equity pending against the institution at the time he takes possession.

The secretary may, in his name as receiver of a corporation, institute and maintain against any officer, director, trustee, manager, or other employe of such corporation, any action at law or in equity which such corporation, or any shareholder or creditor thereof, could have instituted or maintained; and he may likewise, in the case of a person of which he is receiver, maintain any similar action against the individuals owning the business or against any employe thereof, which a depositor or other creditor of the person could have instituted or maintained.

B. All claims against the institution, suit upon which has not been commenced prior to the time the secretary took possession, shall be presented in the regular manner provided by this act for the presentation of claims. Neither a depositor or other creditor of the institution, nor any other claimant, may maintain any action at law or in equity upon such claim, except by regular method provided by this act for exceptions to the accounting of the secretary as receiver. However, an action for the return of specific property which could have been recovered from the institution of which he is receiver may be maintained against the secretary in his name as receiver of the institution.

C. Any action at law or in equity, based upon a cause of action against the institution of which the secretary is receiver, which may be brought against the secretary as receiver, shall be instituted only in the court in which the certificate of possession is filed.

Section 714. Power of Secretary to Borrow from or Sell or Pledge to Government Agencies.--A. The secretary may, without leave of court, borrow money from any agency or instrumentality of the United States government, except national banks, or of the Commonwealth of Pennsylvania, and pledge or hypothecate, as security therefor, any real or personal property of the institution, for the purpose of expediting the liquidation of the assets of the institution of which he is receiver, and the distribution of the proceeds thereof to the depositors, the other creditors, or the shareholders thereof.

B. The secretary may, without leave of court, sell or pledge assets of a closed institution to any public body of the United States, or agency or instrumentality of the United States government, except national banks, or of the Commonwealth of Pennsylvania.

(714 amended Oct. 5, 1978, P.L.1133, No.266)

Section 715. Surrender or Transfer of Burdensome Assets.--The secretary may, with leave of court, surrender to the institution of which he is receiver any real estate which appears to be burdensome and of no advantage to the estate. He may likewise, with leave of court, convey title to any other holder of a mortgage or a lien against property in his possession, where it shall appear that to continue to hold such property is burdensome and of no advantage to the estate.

The secretary shall give notice to the depositors or other creditors of the institution of the filing of the petition for leave to transfer or convey such property pursuant to the provisions of this section. Such notice shall be given at the addresses which appear for such depositors or other creditors upon the books or other records of the institution, or if none appear there, then at their last known addresses. However, the court may, if it shall appear to be in the best interests of the estate, order the secretary to substitute a single advertisement in a newspaper or newspapers, for the individual notice to the depositors and other creditors. The court shall grant at least ten days for the filing of objections by the depositors or other creditors of the institution.

(715 amended Dec. 9, 2002, P.L.1604, No.209)

Section 716. Compromise of Claims; Extension of Mortgages.--A. The secretary may, with leave of court, compound or compromise any debt, claim, or judgment due to the institution of which he is in possession as receiver, and discontinue any action or other proceeding pending therefor.

B. The secretary may, without leave of court, enter into an agreement in writing, upon such terms as shall seem

reasonable to him, with any mortgagor or owner to extend for a period not to exceed three years the maturity of any mortgage obligation in his possession. However, the secretary shall not enter into any agreement extending any mortgage which shall have been pledged by the institution of which he is in possession as receiver, unless he shall first obtain the written consent of the pledgee of such mortgage to such extension.

Section 717. Payment of Mortgages and Liens; Protection of an Equity.--The secretary may, with leave of court, pay off all mortgages, contracts of conditional sale, pledges, and liens of or upon any real or personal property which belongs to the institution. He may without leave of court, purchase, at a judicial sale or at any sale authorized by an order of a court of competent jurisdiction, any real or personal property in order to protect any equity which such institution has in such real or personal property.

Section 718. Sales of Real Property.--The secretary may, with leave of, and upon the terms and conditions prescribed by, the court, sell any real property of the institution of which he is in possession as receiver. The order of the court authorizing such sale shall state whether the sale shall be entirely for cash or partly for cash and partly for evidences of indebtedness, whether it shall be public or private, whether notice shall be given to depositors, other creditors, and shareholders, or to any of these groups, and whether advertisement shall be made. Unless the court, in any case, deems advertisement or notice necessary or desirable to protect the interests of the estate, such advertisement or notice shall not be required. If the court does require advertisement or notice, then the court shall in no case require more than a single insertion in one newspaper of general circulation in the county of the receivership and one in such other county where the real property may be located.

Every such sale of real property shall be confirmed by the court, if all the terms and conditions of its order authorizing such sale have been complied with.

(718 amended Dec. 9, 2002, P.L.1604, No.209)

Section 719. Effect of Sale upon Liens.--A. The sale by the secretary of any real property of an institution of which he is in possession as receiver, shall not affect any lien thereon, except that, in the case of a lien which would under the laws of the Commonwealth ordinarily be discharged by a judicial sale, the court in its order authorizing the sale, may prescribe that such lien shall be discharged by the sale. Whenever such liens are to be discharged by a sale, the secretary shall give notice of the sale to all creditors who appear, by the books of the institution or by the records of the county, or otherwise, to have or to claim to have such liens upon such property. The proceeds of the sale shall then take the place of the property sold and shall be distributed in the order prescribed by, and to the parties entitled to take under, the laws of the Commonwealth which relate to the discharge of liens by a judicial sale.

B. If real property is situated in a county other than that in which the institution is located, the court in which the certificate of possession is filed shall be the one empowered to issue the original order prescribing the discharge of liens.

The procedure shall be the same as in the case of any other terms or conditions prescribed in its order for the sale of real property situated in another county.

Section 720. Leases for Property.--The secretary may, without leave of court, enter into leases for real or personal

property belonging to the institution of which he is in possession as receiver, for a period not to exceed one year. He may, with leave of court, enter into such leases for a period not to exceed ten years, upon the terms and under the conditions prescribed by the order of the court.

The court shall not require advertisement of notice of leases entered into upon its order, except where special circumstances shall appear to require such action in order to protect the interests of the estate.

Section 721. Sale or Exchange of Personal Property, Listed and Unlisted Securities.--A. The secretary may, without leave of court, sell on any stock exchange or otherwise, at such times and in such manner as he shall deem to be to the best interests of the estate, listed or unlisted securities which belong to the institution of which he is in possession as receiver, or which such institution has the power to sell. (A amended Dec. 9, 2002, P.L.1604, No.209)

B. The secretary may, without leave of court, exchange listed or unlisted securities for other securities of the corporation issuing the securities, or of a corporation which has merged or consolidated with or has taken over such corporation.

C. The secretary may, without leave of court, sell any mortgage or other lien upon real property or any judgment, at such times and in such manner as he shall deem to be in the best interests of the estate. (C amended Dec. 9, 2002, P.L.1604, No.209)

D. Except as otherwise specifically provided by this act the secretary may, without leave of court, sell (1) at public sale, or (2) at private sale for a net consideration not below the amount at which such personal property has been valued in the appraisal required by this act, any personal property which belongs to the institution of which he is in possession as receiver, or which such institution has the power to sell. He may, with leave of court, sell such personal property at private sale upon such terms and under such conditions as the court shall prescribe.

Section 721.1. After all assets and real estate of an estate in liquidation by the secretary have been either liquidated or, where possible and practicable, reduced to judgment or surrendered to the institution, with the permission of the court, and in the judgment of the secretary it becomes economically advisable finally to wind up the affairs of the institution in liquidation, he shall file a final account with the court having jurisdiction of the estate and at the audit of that account he shall be permitted to impound the balance of the assets, including real estate remaining in his hands, and he shall not sell such remaining assets at public sale. Upon confirmation of his final account, the secretary shall be discharged from all liability on his bond or otherwise and shall thereafter be under no duty or obligation actively to collect on the impounded assets. With regard to said assets, including real estate and including after discovered assets, he shall, however, retain all of his powers to receive payment for them or, with leave of court, to adjust or compromise them.

After his final accounting and discharge, the secretary shall have power to make further distribution to the creditors, depositors and shareholders when, in his opinion, sufficient funds are realized to justify such distribution after deducting reasonable costs for collection, preservation and distribution.

If the secretary is of the opinion that the funds collected or probably to be collected will be insufficient to make a

distribution practicable, he shall, after deducting reasonable costs for collection and preservation, pay the remainder to the State Treasurer through the Department of Revenue without escheat. Refunds to claimants entitled thereto shall be made by the Board of Finance and Revenue as provided in similar cases where money is paid to the State Treasurer through the Department of Revenue without escheat.

(721.1 added May 26, 1949, P.L.1842, No.546)

Section 722. Deposit of Moneys by Secretary.--All moneys received by the secretary as receiver of an institution shall be deposited by him with one or more corporations or persons authorized by law to receive deposits and subject to the supervision either of Federal or State banking authorities. He shall require of such depository security therefor, in such amount and of such nature as the secretary shall deem adequate.

Section 723. Enforcement of Shareholders' Liability.--(723 repealed Dec. 9, 2002, P.L.1604, No.209)

Section 724. Property in Safe Deposit Vault or Held for Safe-Keeping.--The secretary may, any time after taking possession of an institution as receiver, give written notice to anyone claiming or appearing on the books of such institution to be the owner, or to be entitled to the possession, of any personal property left with such institution as bailee for safe-keeping or depository for hire, and to anyone appearing on the books of the institution to be the lessee of any safe, vault, or safe deposit box, notifying such bailor or lessee respectively, to remove all such personal property within the period fixed by the notice, provided that such period shall in no case be less than sixty days after the date of the notice.

At the expiration of such period if the lessee of a safe, vault, or safe deposit box has not removed the contents thereof, the secretary may cause such safe, vault, or safe deposit box to be opened either in his presence or in the presence of the deputy receiver of the institution, and in the presence of a notary public not an officer or employe of the institution or of the department. The contents, if any, of such safe, vault, or safe deposit box shall then be sealed and marked by such notary with the name and address of the lessee in whose name such safe, vault, or safe deposit box appeared on the books of the institution and with a list and description of the property therein. The secretary shall take such action as he shall deem desirable to safeguard such property until it is delivered to the owner or is otherwise disposed of in accordance with law.

The secretary shall follow the same procedure and have the same powers with regard to the property left with the institution as bailee for safe-keeping or depository for hire and not called for within the period specified by the notice.

The contract of bailment or lease, if any, shall be considered at an end upon the date designated by the secretary for the removal of the property therein. The amount of unearned rent or charges, if any, paid by the bailor or lessee, shall become a debt of the institution.

Section 725. Rights of Subrogation.--When a public body of the United States or this Commonwealth has made payment to any depositor, it shall become subrogated to all rights of the depositor against the institution in possession to the extent of such payment.

(725 amended Dec. 9, 2002, P.L.1604, No.209)

Section 726. Additional Powers of the Receiver.--In addition to any other power, right, privilege, immunity, ability or other authority conferred upon the secretary by this act, the secretary, as receiver of any institution, shall have any power,

right, privilege, immunity, ability or other authority conferred upon the Federal Deposit Insurance Corporation by Federal law when acting as conservator or receiver which does not conflict with any power, right, privilege, immunity, ability or other authority conferred upon the secretary by this act, including the powers, rights, privileges, immunities, abilities and authorities conferred upon the Federal Deposit Insurance Corporation by section 11(d) through (w) of the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. § 1821(d) through (w)). The powers, rights, privileges, immunities, abilities and other authorities conferred upon the secretary by this provision are discretionary, and nothing in this act or any other law shall require the secretary to exercise any such power, right, privilege, immunity, ability or other authority when the secretary, in his discretion, determines not to do so.

(726 added Dec. 9, 2002, P.L.1604, No.209)

Section 727. Taxation.--A. The receiver, including, for purposes of this section, the secretary and the department, shall be exempt from all taxation imposed by any state, county, municipality, local or other taxing authority in any state to the extent permitted by law and the Federal Government to the extent permitted by Federal law, except that any real property of the receiver shall be subject to applicable state, county, municipal or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

B. No property of the receiver shall be subject to levy, attachment, garnishment, foreclosure or sale without the consent of the receiver, nor shall an involuntary lien attach to the property of the receiver.

C. The receiver shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate or recording tax or any recording or filing fees when due.

(727 amended Dec. 9, 2002, P.L.1604, No.209)

ARTICLE VIII

SECRETARY IN POSSESSION OF TRUST COMPANY OR TRUST DEPARTMENT

(Hdg. amended Dec. 9, 2002, P.L.1604, No.209)

Section 801. Institution as Fiduciary.--References in this act to funds, property, or investments held in a fiduciary capacity by an institution of which the secretary has taken possession, shall apply only to funds, property, or investments held in such fiduciary capacity by the trust company or trust department of such institution, and shall not apply to funds, property or investments which were held by the commercial department of such institution.

(801 amended Dec. 9, 2002, P.L.1604, No.209)

Section 802. Secretary in Possession of Trust Company or Trust Department.--A. The secretary, upon taking possession of an institution as receiver, shall keep all the funds, property, and investments, if any, which are held by such institution in a fiduciary capacity, separate from the assets of the institution itself.

B. The secretary, when in possession of an institution as receiver, shall have all the rights, powers, and duties which such institution had in its fiduciary capacity. He shall have

title to all the assets, including debts due, liens and other security therefor, and all rights of action or redemption, of all estates of which the institution, either alone or jointly with someone else, was trustee, executor, administrator, guardian, assignee, or other similar fiduciary, and shall have the power to administer such estates. In pursuance of this power, the secretary may institute any action at law or in equity, or execute and sign any written instruments, which the institution itself could have instituted, executed, or signed.

C. The secretary shall not have the power to invest funds or property of any such estate, except where it shall appear necessary to purchase any real or personal property or any interest therein, in order to protect an equity which such estate has in such property. Such purchase by the secretary shall not be made without the approval of any corporation or person whose approval would have been necessary to such purchase by the institution prior to the taking of possession by the secretary, and of the court which has exercised jurisdiction over such estate. If no court has yet exercised jurisdiction over the estate, then the approval either of the court of common pleas or of the orphans' court of the county in which the place of business of the institution is situated shall be procured.

Except where otherwise specifically provided, references in this act to the court which has exercised jurisdiction over an estate of which an institution in possession of the secretary was fiduciary, shall be construed to refer, in cases in which the institution was executor or administrator, to the orphans' court of the county of which the register of wills issued the letters testamentary or letters of administration respectively, and in all other cases, to the court of common pleas or the orphans' court in which an account of the estate has been filed, or which has, in any manner, exercised control or supervision over the administration of such estate by the institution as fiduciary.

(802 amended Dec. 9, 2002, P.L.1604, No.209)

Section 802.1. Appointing Successor Trustee.--A. Before or after determining to liquidate the institution, the secretary, upon taking possession of an institution as receiver, may enter into any agreement to assign, sell or transfer one or more trust accounts to one or more successor trustees without incurring any liability.

B. Upon the sale, assignment or transfer of a trust account pursuant to subsection A, the successor trustee shall be automatically substituted by reason of the sale, assignment or transfer as fiduciary of the trust account without further action and without any order or decree of any court or public officer.

C. No designation, nomination or appointment as fiduciary shall lapse by reason of the sale, assignment or transfer of a trust account pursuant to subsection A. The successor trustee shall be entitled to act as fiduciary to the same extent as the institution taken into possession by the secretary.

(802.1 added Dec. 9, 2002, P.L.1604, No.209)

Section 803. Disputes as to Identity of Trust Funds.--All disputes as to the identity of the funds, property, or investments of an estate, of which an institution in the possession of the secretary was fiduciary, arising either because such funds, property or investments have become or are alleged to have become mingled with other funds, property, or investments, or for any other reason, shall be determined by the court in which the certificate of possession is filed. Such court shall have exclusive jurisdiction over such disputes.

Section 804. Appointment of Substituted Fiduciaries.--A.

Upon filing a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of the institution, the secretary shall forthwith give written notice, in so far as the giving of such notice is practicable, to settlors of the account that has not been assigned, sold, or transferred to a successor trustee under section 802.1, or if the settlor is deceased, to persons who are readily ascertainable as beneficiaries of the account by their receipt of statements of the account, and any co-fiduciary of the account, of whom the secretary has notice. Such notice shall be given at the addresses which appear for such parties upon the books or records of the institution, or if none appears there, then at their last known address. Such notice shall require such parties, within thirty days after the giving of notice, to apply for the appointment of substituted fiduciaries and shall notify such parties that the receiver is statutorily stayed from taking any action regarding the administration of the trust accounts unless otherwise ordered by the court except for transferring the trust account to a successor trustee or a substituted fiduciary. Such application shall be made as follows, with a copy of the application being mailed or delivered to the secretary upon the filing of the application: In any case in which the institution was executor or administrator, application shall be made to the register of wills having jurisdiction to grant new letters in such form as the case shall require; in any other case, application shall be made to any court which has exercised jurisdiction over the estate, or if no court has exercised such jurisdiction, then to the court of common pleas, or the orphans' court, of the county in which the institution has its place of business. However, if the instrument under which the fiduciary relationship was established provides a particular method for the selection of fiduciaries, such method shall be followed.

B. The court may, if it shall appear to be in the best interests of the estate, order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to all such parties. Such notice shall require such parties, within thirty days after the giving of notice, to apply for the appointment of substituted fiduciaries and shall notify such parties that the receiver is statutorily stayed from taking any action regarding the administration of the trust accounts unless otherwise ordered by the court. The stay shall not apply to transferring the trust account to a successor trustee or a substituted fiduciary.

C. If the parties to whom notice pursuant to subsection A or B has been given do not, within the thirty-day period designated, make such application, or pursue whatever method is prescribed by the instrument under which the fiduciary relationship was established, for the appointment of a substituted fiduciary, or if it is impracticable to give notice to the parties interested in the estate, then the secretary shall make the application for the appointment of a substituted fiduciary to the court or the register of wills, whichever the case may be, designated above. Such court or register of wills shall appoint a substituted fiduciary upon such petition of the secretary.

(804 amended Dec. 9, 2002, P.L.1604, No.209)

Section 805. Notice of Transfer; Filing of Disputes.--Within thirty days, or another period of time designated by the department, of the sale, assignment or transfer of a trust account to a successor trustee pursuant to section 802.1A, or

of the appointment of a substituted fiduciary pursuant to section 804, the successor trustee or substituted fiduciary shall provide notice to settlors of the account, or, if the settlor is deceased, to persons who are readily ascertainable as beneficiaries of the trust account by their receipt of statements of the account, and any co-fiduciary of the account, of whom the secretary has notice. With respect to trust accounts that have not been transferred, assigned or sold, the secretary as receiver shall provide the notice required in this section. The notice to such parties shall indicate that the account has been sold, assigned or transferred to the successor trustee or transferred to the substituted fiduciary. Such notice shall require such parties within thirty days of receipt of the notice to notify the receiver and the successor trustee or substituted fiduciary if there is any dispute as to the amount or identity of the funds, property or investments of the estate, and as to the fees, commissions, and expenses due either the institution before the secretary took possession or to the secretary as receiver since the taking of possession. If such parties do not notify the secretary as receiver and the successor trustee or substituted fiduciary of any dispute, no accounting in court shall be required, and the secretary and the institution in receivership shall be discharged and released in full from any further duty or liability with regard to such trust account.

(805 amended Dec. 9, 2002, P.L.1604, No.209)

Section 806. Filing of Account; Transfer of Assets to Substituted Fiduciary.--A. Except in cases in which the secretary is authorized by the provisions of this act to transfer to a successor trustee or a substituted fiduciary, without filing an account, the funds, property, or investments of an estate of which the institution was fiduciary, he shall file an account for every estate of which such institution was fiduciary and of which the secretary received notice of a dispute under section 805. The secretary, with the assistance of the successor trustee or the substituted fiduciary, shall file each such account upon the date fixed by the instrument creating the fiduciary relationship, or if there is no such date fixed, then as soon as expedient after the filing of a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of the institution. Such account shall be filed in the court which has exercised jurisdiction over the particular estate, or if no court has yet exercised jurisdiction, then in the court of common pleas, or the orphans' court, of the county in which the place of business of the institution is situated.

B. The secretary may seek an order from the court which has exercised jurisdiction over a particular estate of which the institution was fiduciary, or if no court has exercised such jurisdiction, then the court of common pleas, or the orphans' court, of the county in which the institution has its place of business, to transfer the funds, property, or investments of the estate to the successor trustee or the substituted fiduciary, even prior to the filing of an account. The court, in such order, may reserve for future determination any question of surcharge, or any other question which may arise upon the audit of the account.

C. This section shall not be construed to give any court, other than the one in which the certificate of possession is filed, jurisdiction over disputes involving the identity of funds, property, or investments of an estate of which the institution was fiduciary.

(806 amended Dec. 9, 2002, P.L.1604, No.209)

Section 807. Deficiencies in Assets Held by Institution as Fiduciary.--Whenever the court, in which the secretary has filed the account of an estate of which an institution in his possession was fiduciary, shall, in the manner provided by law, rule that there is a deficiency in the funds, property, or investments of such estate, or that the institution is liable to surcharge in respect thereto, the amount determined by such court to be due shall constitute a claim against the institution and shall be presented in the same manner as other claims, except that it may be presented at any time within six months after the appointment of a successor trustee or a substituted fiduciary of the estate and the adjudication of the account of such estate by the competent court. Such order or decree of such court shall be conclusive as to the amount due, except for the right of appeal provided by law. Any dispute as to the classification or order of payment of such claim, as distinguished from the amount, shall be adjudicated by the court in which the certificate of possession is filed.

If the existence or amount of any such deficiency or surcharge, or the liability of the institution therefor, is in litigation but undetermined at the time dividends for claims having no priority in order of payment over such claims are being distributed, the secretary shall, upon notice of such fact from the successor trustee or substituted fiduciary, withhold and set apart a sufficient amount to pay the proportionate dividend which will be due upon such undetermined claim if it is finally adjudicated in favor of the estate of which the institution was fiduciary.

(807 amended Dec. 9, 2002, P.L.1604, No.209)

Section 808. Compensation Due Institution and Secretary from Estates.--The secretary in possession of an institution as receiver shall be entitled to collect such reasonable fees and commissions as were earned, both as to income and as to principal, and such reasonable expenses as were incurred, by the institution in its capacity as fiduciary, prior to the date on which possession was taken by the secretary. He shall also be entitled to reasonable fees and commissions, both as to income and as to principal, for any services performed, and all reasonable expenses incurred, by him on behalf of any estate of which the institution was fiduciary. The secretary shall be entitled to such commissions on principal as shall appear reasonable under all the circumstances, whether or not the trust has terminated at the time of the filing of the account or of the transfer by the secretary of the funds, property, and investments of the estate in accordance with the provisions of the instrument creating the fiduciary relationship. All sums received by the secretary under this section shall become assets of the institution of which he is in possession as receiver.

Except in cases where the secretary, pursuant to the provisions of this act, transfers funds, property, or investments of the estate without filing an account, the court in which the secretary shall file the account for the estate of which the institution was fiduciary shall award to the secretary the fees, commissions, and expenses provided for in this section.

ARTICLE IX
SECRETARY IN POSSESSION OF A MORTGAGE
OR SECURITY POOL OR OF AN ASSET IN
WHICH UNDIVIDED INTERESTS ARE HELD
(Art. repealed Dec. 9, 2002, P.L.1604, No.209)

Section 901. Mortgage and Security Pools and Participations; Accounts.--(901 repealed Dec. 9, 2002, P.L.1604, No.209)

Section 902. Transfer of Pools and Participations without Filing an Account.--(902 amended Dec. 9, 2002, P.L.1604, No.209)

Section 903. Notice of Filing Account.--(903 repealed Dec. 9, 2002, P.L.1604, No.209)

Section 904. Appointment of Substituted Fiduciary; Transfer of Pools or Participations upon Order of Court.--(904 repealed Dec. 9, 2002, P.L.1604, No.209)

Section 905. Advances by Secretary to Substituted Fiduciary.--(905 repealed Dec. 9, 2002, P.L.1604, No.209)

Section 906. Compensation and Expenses.--(906 repealed Dec. 9, 2002, P.L.1604, No.209)

ARTICLE X PROOF OF CLAIMS, ACCOUNTING, AND DISTRIBUTION

Section 1001. Notice to Depositors and Other Creditors.--After filing a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of an institution of which he has taken possession as receiver, the secretary shall forthwith give notice of such fact to all corporations or persons who appear upon the books of the institution as, or who are otherwise known to the secretary to be or claim to be, depositors or other creditors. He shall likewise give notice to any corporation or person who, pursuant to the provisions of this act, has given the secretary notice of his claim to the right of execution or attachment against any assets, owned by, or legally in the custody or possession of, the secretary as receiver of the institution. Such notice shall be given at the addresses which appear for such corporations or persons upon the books or other records of the institution or, if none appear there, then at their last known addresses. However, if it appears to be in the best interests of the estate, the court may order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to the corporations or persons.

The notice to each depositor shall state the amount which the books or other records of the institution show to be due to such depositor. It shall also state that unless such depositor shall, within a specified time, present to the secretary for settlement, his deposit or pass book, or other evidence of his account, showing a different amount to be due, or unless such depositor shall, within a specified time from the date of such notice, prove in the manner provided by this act that a different amount is due, the amount shown to be due by the books of the institution will be conclusively presumed to be correct, unless the court, pursuant to the provisions of this act, grants him an extension of time.

The notice to each creditor other than a depositor shall inform such creditor that he must present his claim in the manner provided by this act, within a specified time from the date of such notice, or else be permanently barred from sharing in any distribution of the assets of the institution, unless the court pursuant to the provisions of this act, grants him an extension of time.

The secretary shall also advertise in a newspaper or newspapers, as provided in this act, the fact that he has determined to liquidate the affairs of the institution, and that he has filed an inventory and appraisal in the office of the prothonotary. Such advertisement shall state that all depositors must prove their claims within a specified period or be bound by the amount shown by the books or records of the

institution to be due them, and that any corporation or person not appearing upon the books of the institution to be a depositor and not presenting his pass book, or other evidence of the state of his account, or otherwise presenting his claim, will be permanently barred from sharing in any distribution of the assets of the institution, unless the court, pursuant to the provisions of this act, grants him an extension of time. It shall also state that all creditors, other than depositors not proving their claims in the manner provided by this act and within a specified period will likewise be permanently barred from sharing in any distribution of the assets of the institution, except where the court, pursuant to the provisions of this act, grants to a creditor an extension of time.

The secretary shall specify as the last day upon which depositors and creditors can present their claims, a date not less than sixty days after the taking of possession of the institution by him as receiver, provided that such date shall be at least thirty days after the date of the sending of such notice. However, claims based upon deficiencies in, or surcharges with respect to funds, property, or investments which such institution held in a fiduciary capacity may be presented at any time within sixty days after the appointment of a substituted fiduciary of the estate of which such funds, property, or investments were a part and the adjudication of the account of such estate by the competent court.

(1001 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1002. Proof of Claims of Depositors. --Any depositor who disagrees with the amount shown by the books or other records of the institution to be due to him, shall present his claims to the secretary by presenting his deposit or pass books, or other evidence of indebtedness, to the secretary, within the time and in the manner designated by the secretary, pursuant to the provisions of this act. Any such depositor who shall not have received or shall have lost his deposit or pass book or other evidence of indebtedness, or who shall believe that the amount shown by such deposit or pass book or other evidence of indebtedness to be due to him is incorrect, shall, within the time designated by the secretary, present his claim to the secretary by whatever method he shall designate.

Any depositor who shall not present his claim within the designated time and in the manner provided by this section, shall be bound by the amount appearing to be due to him upon the books or records of the institution, or where the name of such depositor does not appear at all upon the books or records of the institution, or appears on such books or records but with no balance appearing to be due to him by the institution, shall be permanently barred from sharing in any distribution of the assets of the institution. However, the court may, upon petition and adequate cause shown, permit any depositor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the secretary.

This section shall not, however, be construed to deprive any such depositor of any right of action at law or in equity which he may have against an employe or former employe of the institution, or upon the bond of such employe or former employe, for any act committed by such employe which resulted in such depositor's not appearing upon the books of the institution, or appearing upon them but being credited with an amount below that actually due.

The secretary shall prescribe the form for the proof of claim of all depositors and for the affidavit to be included therein.

Whenever requested by any such depositor to prepare such proof of claim or to take the affidavit thereto, the secretary shall do so without any charge to such depositor.

(1002 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1003. Proof of Claims of Creditors.--A. Creditors other than depositors, or in the case of a building and loan association, other than shareholders, shall not share in any distribution of the assets of the institution, unless the creditor, or someone for him, shall, within the time specified by the secretary, pursuant to the provisions of this act, present to the secretary a statement of his claim, together with a copy of any book entries pertaining thereto, any note or other instrument received as evidence thereof, and a list of any collateral or agreement of pledge received in connection therewith.

However, the court may, upon petition and adequate cause shown, permit any creditor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the secretary.

The statement of a creditor's claim, required by this section, shall be verified by affidavit in substantially the following form:

"I, (name of claimant), do solemnly swear (or affirm) that the above is a true statement of my claim against (name of institution); that there are no credits or allowances against this claim except as therein set forth; that there is no collateral security for this indebtedness or any part thereof held by me or by anyone else, other than as above set forth; and that I am not the owner or the obligee, directly or indirectly, of any contract of indemnity or insurance covering this claim, except as set forth above."

If the creditor shall be a corporation, such affidavit shall be made by the treasurer or assistant treasurer thereof, and if a partnership, by any member thereof. In either such case the form of the affidavit shall be modified accordingly.

(A amended Dec. 9, 2002, P.L.1604, No.209)

B. The provisions of this section shall not apply to the claims of parties interested in the custody, possession, or control of funds, property, or investments held by such institution in a fiduciary capacity. However, except as otherwise provided in this act, the provisions of this section shall apply to disputes concerning the identity of such funds, property, or investments, or to claims based upon deficiencies therein, or the liability of the institution to surcharge thereon.

Section 1004. Allowance of Claims.--For the purposes of the accounting provided for in this act, the secretary shall allow the claims of depositors for the amounts shown to be due to them upon the books or other records of the institution, or for such other amounts as they shall, within the time and in the manner provided by this act, prove to the satisfaction of the secretary are due to them. He shall likewise allow the claims of all other creditors, when presented within the time and in the manner provided by this act, if he shall be satisfied that the amounts claimed are rightfully due. He shall reject all other claims of depositors and other creditors.

(1004 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1005. Advance Payments of Dividends to Depositors.--After filing a supplement to the certificate of possession, setting forth his determination to liquidate the affairs of the institution, the secretary may, without leave

of court and without filing an account, make an advance payment of a dividend to all depositors the amounts of whose claims, as they appear upon the books or other records of the institutions, are undisputed. The dividend shall be calculated as if the claims of all other depositors, as they appear upon the books or other records of the institution, and the claims of all creditors or other corporations or persons who assert priority over, or parity with, depositors in the order of distribution of the assets, were valid and uncontested.

However, the secretary shall not make such an advance payment of a dividend to any depositor until he shall have set aside an amount sufficient to pay in full the claims of all creditors or other corporations or persons asserting or entitled to priority over depositors in the order of distribution, and to pay the proportionate dividend on the amounts claimed by the other depositors, and by any creditors or other corporations or persons who are entitled to or who claim parity with depositors in the order of distribution provided for by law. He shall likewise set aside before making such advance payment such amount as he shall deem necessary for the expenses of administration of the institution by him, as receiver.

(1005 amended Dec. 22, 1933 (Sp. Sess. 1), P.L.101, No.20)

Section 1006. Expenses of Administration.--Any reasonable expenditure made by the secretary as receiver of an institution, including any expense incurred in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of the institution, and any compensation paid to the deputy receiver or any other person employed to assist the secretary in such management, reorganization, consolidation, liquidation, or distribution, and to any deputy attorney general, special deputy attorney general, assistant deputy attorney general, or other attorney who has been assigned by the Office of Attorney General to the secretary to handle for him any legal business pertaining to the affairs or property of such institution, shall be paid out of the assets of the institution, provided it is included in any partial or final account filed by the secretary, pursuant to the provisions of this act, and is approved by the court in which such account is filed.

Where such expenses are incurred, or such compensation is paid, for the benefit of the estate of more than one institution in the possession of the secretary as receiver, an equitable portion of such expenses or compensation shall be paid out of the assets of each institution on whose behalf such expenditures were made.

(1006 amended Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 504 of Act 164 of 1980 provided that section 1006 is repealed insofar as it is inconsistent with Act 164.

Section 1007. Partial or Final Account; Objections.--A. At any time after the expiration of the period fixed by the secretary, pursuant to the provisions of this act, for the presentation of claims, he shall file a partial or final account of his administration of the business and property of the institution, duly verified by him under oath or affirmation, in the office of the prothonotary.

If the secretary shall not file his first account within one year after he takes possession of an institution, any depositor or other creditor of such institution may petition the court to order the secretary to file an account. The court may, in its discretion, grant or refuse the petition.

The account shall present his administration of the estate, including a statement of all receipts or expenditures by the secretary, as receiver, a list of all claims which have been allowed and a separate list of claims which have been objected to or are disputed, showing as to all depositors and other creditors their names and addresses, the amounts due or claimed to be due to them, and any priorities in the order of distribution granted to or claimed by them.

B. The secretary shall forthwith give written or printed notice of such filing of an account to all corporations or persons whom he knows to be, or to claim to be, depositors and other creditors of the institution, at the addresses which respectively appear for them upon the books of the institution, or if none appear there, at their last known respective addresses. However, if it shall appear to be in the best interests of the estate, the court may order the secretary to substitute a single advertisement in a newspaper or newspapers for the individual notice to such corporations or persons. Such notice shall also state that unless an exception to the account or to any item therein is filed with the court within thirty days from the date of the filing thereof, it will be confirmed absolutely.

He shall likewise give notice to any corporation or person who, pursuant to the provisions of this act, has given the secretary notice of his claim to the right of execution or attachment against any assets, owned by, or legally in the custody or possession of, the secretary as receiver of the institution.

He shall also advertise such notice in a newspaper or newspapers as provided in this act, stating the date upon which he has filed his partial or final account and the fact that all exceptions to the account must be filed within thirty days from the date of the filing of such account.

The secretary shall forthwith file with the court, under oath or affirmation, a statement that he has, in the manner provided by this act, sent both the notice of his determination to liquidate and the notice of his filing of an account to all corporations or persons entitled thereto, whose names appear in the account, at the addresses stated therein. He shall also file the proofs of publication of the advertisements which he has inserted, pursuant to the provisions of this act, which respectively set forth his determination to liquidate and his filing of an account.

C. The prothonotary shall not be under any duty to recopy or otherwise record such account. He shall make no charge except the regular fee for filing such or similar papers.

(1007 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1008. Exceptions to Account.--A. Any corporation or person who is or who claims to be a depositor, other creditor, or shareholder of an institution, or who has given to the secretary notice of his claim to the right of execution or attachment against any assets owned by, or legally in the custody of, the secretary as receiver of an institution, or who asserts any other type of claim against an institution, may, within thirty days after the filing of an account by the secretary, file in the court specific exceptions in writing, under oath or affirmation, to such account or to any item therein.

Notice of any exception to an individual item in an account shall forthwith be personally served upon, or sent by registered mail to, the corporation or person whose claim is thus objected to, or his counsel, and also the secretary or the deputy

receiver managing the affairs of the particular institution, or the counsel of either. Affidavit of the serving or sending of such notice shall forthwith be filed with the court.

B. Whenever an exception is filed to any expenditure made by the secretary as an expense of administration, the secretary shall keep an accurate record of the salaries and other expenses, exclusive of counsel fees, properly incurred by him in the contesting of such exception. If the exception is overruled and the expenditure is sustained, the court may, in its discretion, assess such expenses and salaries, together with the regular costs provided by law, upon the depositor, other creditor, or shareholder filing such exception.

Section 1009. Adjudication of Rejected Claims and Exceptions to Account.--A. If any claim has been rejected by the secretary or any exception has been filed to the account or to any item thereof, the court shall, as soon as expedient after the expiration of the period for the filing of exceptions to the account, fix a date for hearing in court arguments on all rejected claims and all exceptions to the account or to any item thereof.

The secretary shall give notice of such hearing to all corporations or persons whose claims have been rejected by the secretary or objected to in the manner provided by this act. He shall likewise give notice to all corporations or persons who have filed exceptions to the account or to any item thereof.

Such notice shall set forth, in so far as possible, the reasons for the rejection of the claim or the nature of the exception to the item of the account, and shall state that all parties whose claims are rejected or objected to must appear in court upon the date fixed by the court to prove their claims, or they will be bound by the ex parte decision of the court.

B. The court in which the account is filed shall itself hear arguments upon any rejected claim or upon any exception to an account, or to any item thereof, upon the date fixed by it for this purpose. The court shall itself decide, without delay, all matters in controversy. If any party does not appear in court on the day fixed, the court shall conduct the hearing ex parte and shall render its decision upon the merits as they appear after such hearing.

Section 1010. Confirmation of Account; Distribution of Dividends.--A. If the secretary has approved all depositors' claims as presented by them pursuant to the provisions of this act, or if not presented, as they appear upon the books or other records of the institution, and if no exception has been filed to an account or to any item thereof within thirty days after the filing of such account by the secretary, the court shall confirm the account absolutely. If any funds are available for distribution, the secretary shall then declare and pay out of such funds a partial or a final dividend, according to the priorities established by law.

If the secretary has rejected any such deposit or claim, or if any such exception has been filed, the court shall confirm the account as to all other matters and claims. The secretary may then declare and pay out of the funds available for distribution, if any, a dividend, according to the priorities established by law. The dividend shall be calculated as if all deposits and other claims were valid and approved. The secretary, before paying any such dividend, shall set apart the proportion of such dividend which would be properly apportionable to any claim which has been rejected by the secretary, or to which an exception has been filed, if the amount and the priority claimed were sustained by the court.

If any such claim shall be determined by the court to be valid, the secretary shall pay to the corporation or person entitled thereto the dividend which has been set apart in the manner provided by this section. If any such claim shall be determined by the court to be invalid, the dividend which has been set apart in the manner provided by this section shall be distributed in the order of the priorities established by law, to those whose claims have been approved by the court.

B. The confirmation of any account after the adjudication of all claims therein which have been rejected by the secretary, or to which exceptions have been filed, and of all other exceptions to such account, shall be conclusive as to all matters therein. Except as otherwise provided in this act, no claim of any depositor shall be valid if not listed and approved in the first account which has been filed.

The confirmation of the final account and distribution thereunder shall discharge the secretary, the deputy receiver, any other employe, and the legal counsel, as well as the surety for any of them, from all further civil liability for any act done in his official capacity as receiver, deputy receiver, employe, or legal counsel of the institution.

C. If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the sixty-first day after the date of the notice, the receiver may reject the claim.

(1010 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1011. Order of Preference in Distribution.--(1011 repealed Dec. 9, 2002, P.L.1604, No.209)

Compiler's Note: Section 1602(b)(1) of Act 345 of 1967 provided that section 1011 B is repealed insofar as it is applicable to savings associations, savings and loan associations and building and loan associations.

Compiler's Note: Section 2202 of Act 356 of 1965 provided that section 1011 A is repealed as to banks, bank and trust companies, trust companies, savings banks, private banks and employes' mutual banking associations.

Section 1012. Liquidation of Balance by Trustees.--Except in the case of a mutual institution, the secretary shall dispose in the following manner of any unliquidated assets of an institution of which he was receiver, which are still in his possession after the filing and confirmation of his final account, the payment in full of the claims of all depositors, creditors, and other claimants which have been approved by the court, the return to shareholders, pro rata, of any amounts paid by them pursuant to an assessment made by the secretary, under the provisions of this act, which have proved unnecessary to pay in full the duly presented and approved claims of depositors and other creditors, and the distribution to shareholders of any cash balance remaining thereafter.

The secretary shall call a meeting of all the shareholders of the institution by giving them written notice at least thirty days before the day fixed for the meeting. At such meeting, the shareholders shall elect by ballot a trustee or trustees, who shall complete the liquidation. A majority of the shares present in person or by proxy shall be necessary to elect such trustee or trustees. The secretary shall file one copy of the proceedings of such shareholders' meeting in his office, and

one in the office of the prothonotary. Both copies shall be prepared by him under oath or affirmation.

If no trustee is elected in this manner on the day designated, the secretary shall petition the court in which the certificate of possession is filed for the appointment of a trustee or trustees.

The trustee or trustees who are thus elected by the shareholders or appointed by the court shall give bond to the Commonwealth, in such amount, with such surety and under such conditions as the court may direct. The secretary shall then transfer to such trustee or trustees all the assets of the institution which are still in his possession.

After such transfer by the secretary to a trustee or trustees for the benefit of the shareholders, the institution shall have no corporate powers or privileges whatsoever. The trustee or trustees shall not succeed to any of its powers or privileges except such as shall be necessary to the liquidation of the remaining assets which have been transferred to such trustee or trustees by the secretary.

(1012 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1013. Unclaimed Dividends.--Whenever, upon the audit or adjudication of the final account of the secretary in possession of an institution as receiver, there shall be and remain in his possession any dividends which shall have been awarded to any depositor or other creditor the whereabouts of whom or of whose legal representatives the secretary has been unable to ascertain, or any dividends which otherwise are by law escheatable to the Commonwealth, he shall file in the court the sworn statement required by law, and shall thereupon pay the dividends into the State Treasury, through the Department of Revenue, in accordance with the provisions of law, such moneys to be subject to refund to any corporation or person entitled thereto, pursuant to the provisions of law.

This section shall not be construed to relieve the secretary of any of the duties with respect to such unclaimed or escheatable dividends imposed by law, to the extent applicable, upon any receiver appointed by any court within this Commonwealth.

(1013 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1014. Destruction of Records.--The secretary is authorized to destroy all records of the institution of which he was in possession as receiver, and all records of such receivership, at the expiration of six years from the date of the absolute confirmation of his final account, except where any provision of this act, expressly or impliedly, provides a different method for the disposition of the records or a longer period for their preservation.

ARTICLE XI SPECIAL CRIMINAL PROVISIONS

Section 1101. Criminal Prosecutions.--Upon discovery, by report or otherwise, of any alleged violation of any criminal law of this Commonwealth, which relates to an institution, the department shall refer the matter to the proper criminal enforcement authorities and notify other regulatory agencies.

(1101 amended Dec. 9, 2002, P.L.1604, No.209)

Section 1102. Perjury.--(1102 repealed Apr. 28, 1978, P.L.202, No.53)

Section 1103. Statute of Limitations for Violations of Act.--(1103 repealed Apr. 28, 1978, P.L.202, No.53)

Section 1104. Protection of Employes.--A. No licensee may discharge, threaten or otherwise discriminate or retaliate

against an employe regarding the employe's compensation, terms, conditions, location or privileges of employment because the employe or a person acting on behalf of the employe makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority a violation of law.

B. No licensee may discharge, threaten or otherwise discriminate or retaliate against an employe regarding the employe's compensation, terms, conditions, location or privileges of employment because the employe is requested by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action relating to a violation of law.

C. A licensee may not bring a cause of action against an employe for damages arising out of:

- (1) a report under subsection A; or
 - (2) participation under subsection B.
- (1104 amended June 29, 2009, P.L.46, No.7)

ARTICLE XI-A
BANKING AND SECURITIES
(Art. added July 2, 2012, P.L.814, No.86)

SUBARTICLE A
PRELIMINARY PROVISIONS
(Subart. added July 2, 2012, P.L.814, No.86)

Section 1101-A. Scope of article.

This article relates to the regulation of banking and securities.

(1101-A added July 2, 2012, P.L.814, No.86)

Section 1102-A. Purpose of article.

The purpose of this article is to consolidate regulation of banking and securities under the department.

(1102-A added July 2, 2012, P.L.814, No.86)

SUBARTICLE B
ADMINISTRATION
(Subart. added July 2, 2012, P.L.814, No.86)

Section 1111-A. Agency.

The department shall regulate banking and securities.

(1111-A added July 2, 2012, P.L.814, No.86)

Section 1112-A. Continuation.

(a) Functions.--The department shall assume functions under subsection (b). A securities division is established as a division of the department to perform the functions transferred to the department under subsection (b). The secretary shall appoint a deputy secretary to oversee the administration of these functions.

(b) Transfers.--The following functions of the Pennsylvania Securities Commission are transferred to the department:

(1) Administration of the act of May 5, 1921 (P.L.374, No.176), referred to as the Investment Business Licensing Law.

(2) Imposition of fees under section 615-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(3) Administration of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

(4) Administration of the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law.

(1112-A added July 2, 2012, P.L.814, No.86)

Compiler's Note: See section 8 of Act 86 of 2012 in the appendix to this act for special provisions relating to continuation of prior law.

Section 1113-A. Banking Trust Fund.

(a) Banking Trust Fund.--The Banking Department Fund redesignated as the Banking Fund is converted into a trust fund to be administered for the benefit of institutions, credit unions, licensees and their customers, except for persons subject to regulation under the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972. The fund shall be administered by the department. All interest earned from the investment or deposit of money accumulated in the fund shall be deposited in the fund for the same use. All money deposited into the fund shall be held in trust and shall not be considered general revenue of the Commonwealth and shall be used only to effectuate the purposes of this section as determined by the department and shall be subject to audit by the Auditor General.

(b) Sources of the Banking Trust Fund.--The sources of the fund are as follows:

(1) Money collected or received by the department arising from:

(i) fees, assessments, charges and penalties relating to the regulation of credit unions, institutions and licensees;

(ii) the sale by the Department of General Services of unserviceable property originally paid for out of the fund; and

(iii) similar sources.

(2) The sources of the fund shall not include fees, assessments, charges and penalties generated from:

(i) the Pennsylvania Securities Act of 1972; or

(ii) the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law.

(c) Use of the Banking Trust Fund.--The fund shall be used by the department to pay its expenses relating to the examination and regulation of institutions, credit unions and licensees, except for persons subject to regulation under the Pennsylvania Securities Act of 1972, including the following:

(1) Salaries of the secretary, the deputies, the examiners, the other employees of the department and attorneys.

(2) Rental and other expenses for offices, rooms, garage space and other accommodations, regardless of the municipality in which they are located, occupied by the department. This paragraph excludes offices, rooms, garage space and accommodations in the Capitol Complex.

(3) Premiums for workers' compensation insurance covering the officers and employees of the department.

(4) Premiums for surety bonds for officers and employees of the department required by law to furnish the bonds.

(5) Furniture, stationery, materials, supplies and overhead expenses of the department.

(c.1) Operating reserves of the Banking Trust Fund.--The fund shall maintain an adequate operating reserve as determined by the secretary to be necessary to ensure the ability of the department to continue to pay its expenses described in subsection (c) in the event of adverse economic conditions, the loss of revenue as a result of institutions, credit unions or licensees becoming subject to the jurisdiction of another primary regulator or emergencies. In determining the amount of the reserve to be held by the fund, the secretary shall take

into consideration the accreditation requirements of the Conference of State Bank Supervisors, the National Association of State Credit Union Supervisors and the American Association of Residential Mortgage Regulators.

(d) Department of General Services.--Purchases and leases under subsection (c) shall be made through the Department of General Services, as agent. Contracts of insurance and surety bonds under subsection (c) shall be placed through the Department of General Services, as agent.

(e) Restrictions on appropriations.--

(1) For fiscal years beginning after June 30, 1995, and ending before July 1, 2012, the General Assembly shall appropriate funds as it determines to be necessary from the fund for use by the department or other Commonwealth agencies.

(2) For fiscal years beginning after June 30, 2012, the General Assembly shall appropriate the funds as it determines to be necessary from the Banking Trust Fund for use only by the department and not for any other Commonwealth agency.

(f) Warrant.--Money in the Banking Trust Fund appropriated to the department shall be paid out upon warrant of the State Treasurer drawn after requested by the secretary.

(g) Institution Resolution Account.--

(1) The Institution Resolution Account is established as a restricted account within the Banking Trust Fund.

(2) The sources of the account are as follows:

(i) An amount determined by the secretary each fiscal year based upon economic and regulatory conditions from assessments, fees and administrative penalties generated from statutes administered by the department other than:

(A) the Pennsylvania Securities Act of 1972; or

(B) the Takeover Disclosure Law.

(ii) Amounts received from court litigation involving the department.

(3) The secretary may use the money in the account to pay for costs associated with any of the following:

(i) Resolution of an institution under Article X. Money under this subparagraph may be used in lieu of paying expenses from the assets of an institution under section 1006.

(ii) Seizure and liquidation of a credit union under 17 Pa.C.S. § 503 (relating to regulation by department).

(4) In determining the amount to pay into the Institution Resolution Account each year pursuant to paragraph (1), the secretary shall do so in a manner that builds up a reserve sufficient to pay costs as described in paragraph (3) in a manner that will allow the department to discharge its obligations to resolve, seize or liquidate an institution or credit union without impairing the ability of the department to continue to perform its other duties.

(1113-A amended June 30, 2021, P.L.199, No.39)

Section 1114-A. Conflicts of interest.

Appointed officials and employees of the department shall only be subject to:

(1) section 605 of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972; and

(2) statutes, regulations and statements of policy, generally governing the ethical conduct of appointed officials and State employees in regard to conflicts of interest and other ethics issues.

(1114-A added July 2, 2012, P.L.814, No.86)

SUBARTICLE C

COMMISSION

(Subart. added July 2, 2012, P.L.814, No.86)

Section 1121-A. Organization.

(a) Establishment.--The Banking and Securities Commission is established within the department.

(b) Composition.--The commission shall consist of the following commissioners:

(1) The secretary, who may be represented by a designee.

(2) A designee of the Governor.

(3) Three individuals appointed by the Governor with the advice and consent of a majority of the members of the Senate.

(c) Terms.--

(1) The secretary shall serve ex officio.

(2) A commissioner under subsection (b)(2) or (3) shall serve at the pleasure of the Governor and until a successor is appointed and qualified.

(d) Officers.--The Governor shall designate a commissioner under subsection (b)(3) as chair. The secretary or the secretary's designee shall serve as the vice chair.

(e) Meetings.--The commission shall convene:

(1) on a schedule determined by the secretary; but

(2) at least every three months.

(f) Quorum.--A majority of serving commissioners constitutes a quorum. Action taken at a meeting at which a quorum is present shall be the lawful act of the commission for all purposes.

(g) Compensation and expenses.--

(1) A commissioner under subsection (b)(1) or (2) shall not receive an additional salary in compensation for membership on the commission.

(2) A commissioner under subsection (b)(3) shall receive an annual salary of \$36,000, subject to annual cost-of-living increases under section 3(e) of the act of September 30, 1983 (P.L.160, No.39), known as the Public Official Compensation Law.

(3) All commissioners shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties in accordance with 4 Pa. Code Ch. 40 (relating to travel and subsistence).

(1121-A added July 2, 2012, P.L.814, No.86)

Section 1122-A. Powers and duties.

The commission has the following powers and duties:

(1) Be the final adjudicator of every administrative proceeding which requires the appointment of a hearing officer and which is instituted by the department under any law administered by the department. An action under this paragraph is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(2) Perform functions authorized by the secretary.

(1122-A added July 2, 2012, P.L.814, No.86)

SUBARTICLE D

TRANSITIONAL PROVISIONS

(Subart. added July 2, 2012, P.L.814, No.86)

Section 1131-A. Transition and implementation.

In order to facilitate the reorganization under this article, all of the following shall occur:

(1) Reorganization. The following shall apply:

(i) The secretary shall review and assess the Pennsylvania Securities Commission's organizational structure for an October 1, 2012, reorganization under this article. This subparagraph includes personnel and staffing, budgetary needs and considerations, operations, and statutory and regulatory enforcement requirements, for the purpose of determining the organizational structure and staffing.

(ii) In accordance with the review and assessment under subparagraph (i), by August 31, 2012, the secretary shall submit a reorganization plan to carry out the reorganization under this article to the Executive Board for approval under section 709(b) and (h) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(iii) If the Executive Board approves the reorganization plan under subparagraph (ii), the plan shall take effect September 28, 2012.

(2) Personnel actions. Notwithstanding the reorganization plan required under paragraph (1)(iii), after June 30, 2012, no member of the Pennsylvania Securities Commission or Pennsylvania Securities Commission personnel shall hire new staff or promote or terminate existing staff without the approval of the secretary.

(3) Budgeting and procurement. After June 30, 2012, and before October 1, 2012, without the approval of the secretary, the Pennsylvania Securities Commission may not:

(i) expend funds, other than for payroll; or

(ii) procure goods and services.

(1131-A added July 2, 2012, P.L.814, No.86)

SUBARTICLE E

MISCELLANEOUS PROVISIONS

(Subart. added July 2, 2012, P.L.814, No.86)

Section 1141-A. References.

In statutes, regulations and orders, a reference to the Pennsylvania Securities Commission shall be deemed a reference to the department.

(1141-A added July 2, 2012, P.L.814, No.86)

ARTICLE XII

EFFECTIVE DATE AND REPEALER

Section 1201. Effective Date.--This act shall become effective on the third day of July, one thousand nine hundred and thirty-three, and shall apply to all corporations and persons described herein, whether in existence on such date or coming into existence at any time thereafter.

Section 1202. Acts and parts of acts specifically repealed.

Compiler's Note: Section 1202 repealed various prior acts related to banking.

Section 1203. General Repeal of Acts.--All other acts or parts of acts inconsistent herewith are hereby repealed.

APPENDIX

Supplementary Provisions of Amendatory Statutes

2012, JULY 2, P.L.814, NO.86

Section 8. Continuation is as follows:

(1) The addition of section 1112-A(b)(3) of the act effectively continues the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972 and the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law. The following apply:

(i) Except as otherwise provided in the act, all activities initiated under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law shall continue and remain in full force and effect and may be completed under section 1112-A(b)(3) of the act.

(ii) Resolutions, orders, regulations, rules and decisions which were made under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law and which are in effect on October 1, 2012, shall remain in full force and effect until revoked, vacated or modified under section 1112-A(b)(3) of the act.

(iii) Contracts, obligations and agreements entered into under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law are not affected nor impaired by the transfer under section 1112-A(b)(3) of the act.
(2) (Reserved).

Compiler's Note: Act 86 of 2012 amended, added or repealed the title, sections 2, 17 and 303 and Article XI-A of Act 111.