

DEPARTMENT OF BANKING CODE - OMNIBUS AMENDMENTS

Act of Oct. 24, 2012, P.L. 1396, No. 171

Cl. 07

Session of 2012

No. 2012-171

HB 2369

AN ACT

Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An act relating to the powers and duties of the Department of Banking and the Secretary of Banking 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; providing penalties; and repealing certain acts and parts of acts," further providing for general scope of supervision and exercise of discretion, for assessment of expenses of department upon institutions, for disclosure of information forbidden, penalty and exceptions, for examination of corporations or persons affiliated with institutions and for orders by department; and providing for implementation of the Consumer Financial Protection Act of 2010.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 202D of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking Code, amended December 9, 2002 (P.L.1604, No.209), is amended to read:

Section 202. General Scope of Supervision; Exercise of Discretion.--* * *

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.

* * *

Section 2. Section 204 of the act is amended by adding a subsection to read:

Section 204. Assessment of Expenses of Department upon Institutions.--* * *

C. This section also applies to licensees.

Section 3. Section 302A(5) of the act, amended July 8, 2008 (P.L.827, No.58), is amended to read:

Section 302. Disclosure of Information Forbidden; Penalty; Exceptions.--A. * * *

(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.

* * *

Section 4. Section 402 of the act, amended December 9, 2002 (P.L.1604, No.209), is amended to read:

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).

Section 5. Section 501 B of the act, amended December 9, 2002 (P.L.1604, No.209), is amended and the section is amended by adding a subsection to read:

Section 501. Orders by Department.--* * *

B. Whenever it shall appear to the department that an [attorney, officer,] **officer** or employe of an institution, and in the case of an incorporated institution, a director or trustee thereof, [shall have continued to violate] **has violated** any law **or order** relating to such institution, or [shall have continued] **has engaged in any** unsafe or unsound [practices] **practice or breach of fiduciary duty** in conducting the business of such institution, [after having been warned by the department to discontinue such violations of law or such unsafe or unsound practices,] the department may issue an order directing such [attorney,] 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 [attorney,] officer, employe, director, or trustee.

The office or position of any [attorney,] 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 [attorney,] 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 [attorney,] 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 [directing the institution to remove] **removing** such [attorney,] 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 [attorney,] 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 [attorney,] 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 [attorney,] 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 [attorney,] 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 [attorney,] officer, employe, director, or trustee of any

institution, credit union or licensee in this Commonwealth, for such period as the department shall prescribe.

* * *

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.

Section 6. The act is amended by adding a section to read:

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.

Section 7. This act shall take effect in 60 days.

APPROVED--The 24th day of October, A.D. 2012.

TOM CORBETT