

## DIVISION 6 BANKING AND FINANCIAL INSTITUTIONS

### CHAPTER 1. Short Title, Definitions, and Administration.

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This division may be cited as the Commonwealth Banking Code of 1984.

Source: PL 3-104, § 100.

Commission Comment: PL 3-104 took effect February 6, 1984. PL 3-104, § 1105 repealed PL 3-11, §§ 104(p) and 503(d)(1) and (2), as well as 29 TTC §§ 101-106, and exempted “banks and off-shore banks” from the provisions of PL 3-11, § 503, a section concerning business license fees, formerly codified as 4 CMC § 1503. (4 CMC § 1503 was later repealed—along with most of title 4, division 1—by PL 9-22, a tax reform measure enacted in 1995; see 4 CMC § 1201 et seq.) Finally, PL 3-104 § 1105 nullified all previously-promulgated Commonwealth banking regulations.

#### § 6102. Purpose.

It is the purpose of this division to establish a comprehensive code for the regulation of the banking business within the Commonwealth which will protect depositors and consumers while also encouraging development of the banking, finance and investment industry and in particular locally owned and managed firms. The provisions of this division shall apply to all banks doing banking business from within the Commonwealth, to the extent the provisions are not in contravention of any applicable federal law. This division is meant to supplement the applicable federal laws, and, in particular, federal banking laws, which apply to the Northern Mariana Islands by virtue of Covenant § 502, but only to the extent obligatory in the Commonwealth.

Source: PL 3-104, § 102.

#### § 6103. Definitions.

As used in this division unless the context clearly requires otherwise:

- (a) “Action” in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.
- (b) “Bank” means any person doing a banking business, whether subject to the laws of the Commonwealth or the laws of any other jurisdiction. Bank includes offshore, retail, state, national, foreign, Micronesian and Commonwealth banks but does not include the Development Bank of the Commonwealth government.
- (c) “Banking business” means engaging for profit, but not on an occasional, incidental or fiduciary basis, in the activity of accepting deposits, making secured or unsecured loans, extending credit on the credit of the extender, issuing credit instruments, purchasing and selling credit instruments, commercial paper, securities, coin, currency, and bullion, and generally dealing in finance on behalf of the business or of others, singularly or in conjunction with other financial institutions. Banking business does not include limited purpose brokers in money, security or credit, factors, and numismatic dealers, but none of such excepted enterprises may accept deposits on their own credit as defined herein.
- (d) “Commonwealth bank” means any bank chartered by the Commonwealth.
- (e) “Department” means the Department of Commerce and Labor.
- (f) “Director” means the Director of Commerce and Labor or his or her authorized designee, unless the

context indicates that “director” means the director of a bank.

(g) “Executive officer,” when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, the president, any vice-president, the treasurer, the cashier, the comptroller and the secretary, or any person who performs the duties appropriate to those offices.

(h) “Fiduciary” means trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(i) “Foreign bank” means a bank organized under the laws of a foreign state.

(j) “Foreign state” means any foreign government or any governmental organization or subdivision of a foreign government or any agency or instrumentality thereof.

(k) “Good faith” means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized.

(l) “Item” means any instrument for the payment of money even though negotiable, but does not include money.

(m) “License,” unless specifically qualified, means the general license required of all Commonwealth, state, national, Micronesian or foreign banks by this division as a prerequisite of engaging in any banking business in the Commonwealth.

(n) “Licensee” means any person holding a license under this division.

(o) “Micronesian bank” means any bank chartered under the banking laws of the Marshall Islands, Federated States of Micronesia, or Palau; provided, that such bank is owned 51 percent or more by residents of the Commonwealth, Marshall Islands, Federated States of Micronesia, or Palau.

(p) “National bank” means any bank chartered under the banking laws of the United States.

(q) “Officer” when referring to a bank, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant vice-president, assistant treasurer, assistant cashier, assistant comptroller, or any person who performs the duties appropriate to those offices.

(r) “Offshore bank” or “Offshore banking corporation” means an entity incorporated in the Commonwealth whose purpose and activities are limited to:

(1) Negotiating, making and extending loans to borrowers who are not residents or citizens of the Commonwealth; and/or

(2) Borrowing from lenders who are not residents or citizens of the Commonwealth.

(s) “Offshore bank license” means a license granted under 4 CMC § 6601.

(t) “Person” means an individual, corporation, partnership, joint venture, trust, estate, unincorporated association, or other group or combination acting as a unit.

(u) “Reason to know” means that upon the information available a person of ordinary intelligence in the particular business, or of the superior intelligence or experience which the person in question may have, would infer that the fact in question exists or that there is such a substantial chance of its existence that, if exercising reasonable care with reference to the matter in question, conduct would be predicated upon the assumption of its possible existence.

(v) “Retail bank” means any bank authorized pursuant to this division to accept or hold deposits from persons domiciled in, or formed pursuant to laws of, the Commonwealth.

(w) “Special license” means retail and other such special licenses that may be required in addition to a general license.

(x) “State bank” means any bank chartered under the banking laws of one of the states of the United States or one of the territories of the United States.

Source: PL 3-104, § 102.

Commission Comment: With respect to the references to the “Department of Commerce and Labor” and the “Director of Commerce and Labor,” see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6104. Effect on Existing Banks.

All Commonwealth banks and, to the extent applicable, all banks carrying on banking business from within the Commonwealth shall hereafter be operated in accordance with the provisions of this division, subject to the provisions of 4 CMC §§ 6216 and 6234 and to the extent that the provisions of this division are not inconsistent with, and do not infringe upon, paramount federal laws governing banks.

Source: PL 3-104, § 1101.

§ 6105. Director of Banking.

(a) For the purpose of this division, the Director of Commerce and Labor shall serve as the Director of Banking.

(b) The director may delegate to any officer or employee of the department any of the director's ministerial powers and duties.

(c) The director shall provide as the director deems necessary and sufficient for the bonding of any officers or employees handling money or securities in the course of their employment.

Source: PL 3-104, § 103.

Commission Comment: With respect to the reference to the "Director of Commerce and Labor," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6106. Powers of the Director.

The director has the following powers:

(a) To administer and enforce the provisions of this division as well as any applicable federal banking law for the protection of the general welfare of Commonwealth residents.

(b) To investigate the qualifications of each applicant before any license is issued and thereafter to observe the conduct of all licensees to the end that licenses are not issued to, or held by unqualified or disqualified persons, or by persons whose operations are conducted in contravention of this division.

(c) To deny any application for a license not in compliance with the requirements of this division.

(d) To limit, condition, restrict, revoke, or suspend any license pursuant to the procedure set forth in 4 CMC § 6110.

(e) To conduct an annual audit of the banking operations of any licensee, in accordance with 4 CMC §§ 6411 through 6414, and to conduct any special audit if there is cause to believe that the financial stability of the bank is in danger or the public interest otherwise demands.

(f) To restrict the withdrawal of deposits and request from a court of competent jurisdiction the appointment of a receiver to take possession of the assets, liabilities, books, records, papers, and files of every description belonging to the bank, and collect all loans, fees, and claims of the bank, and see to the payment of its obligations and debts if the director determines or has reason to believe that a bank is not in sound financial condition to continue doing business or that its affairs are being conducted in such a manner that the public or the persons having securities or funds under its custody are in danger of being defrauded.

(g) To accept public comment and hold public hearings on any bank application.

(h) To employ, retain or contract for the services of qualified specialists or experts, as individuals or as organizations, to advise and assist the director.

(i) To have access at all reasonable times to such books, records, vouchers, documents, cash, and securities of any bank, and to call upon the manager or any officer designated by the manager of any bank for such information or explanation as the director may reasonably require for the purposes of enabling the director to perform all required functions under this division. However, the director shall only have access to the account of a depositor of a bank or to any information, matter, or thing relating to the affairs of any customer of a bank pursuant to an order of the Commonwealth Trial Court made on the grounds that there are no other means of obtaining the information required by the director.

(j) To order any person to cease violating a provision of this division or a regulation issued thereunder or to cease engaging in any unsound banking practice.

(k) To adopt such policies, rules, and regulations as may be necessary for the exercise of the powers and duties conferred on the director by this division, in accordance with the Administrative Procedure Act (1 CMC § 9101 et seq.).

Source: PL 3-104, § 104.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."

§ 6107. Additional Banking Powers of the Director.

In addition to the powers conferred by 4 CMC § 6106, the director may require a bank to:

(a) Maintain its accounts in accordance with such regulations as the director may prescribe having regard to the size of the organization.

(b) Observe methods and standards which the director may prescribe for determining the value of various types of assets.

(c) Charge off the whole or part of an asset which at the time of the director's action could not lawfully be acquired.

(d) Write down an asset to its market value.

(e) Record liens and other interests in property.

(f) Obtain a financial statement from a prospective borrower to the extent that the bank can do so.

(g) Obtain insurance against damage to real estate taken as security.

(h) Search, or obtain insurance for, the title to real estate taken as security.

(i) Maintain adequate insurance against such other risks as the director may determine to be necessary and appropriate for the protection of depositors and the public.

Source: PL 3-104, § 105.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6108. Rules and Regulations.

The director may issue and adopt all necessary rules and regulations to carry out the purposes of this division. In the exercise of this power to make rules and issue regulations pursuant to this division, the director shall act in the interests of promoting and maintaining a sound banking system, the security of deposits and depositors and other customers, the preservation of the liquid position of banks and in the interest of preventing injurious credit expansions and contractions. The director may also impose additional filing fees, penalties and interest for such actions as the late renewal of a license.

Source: PL 3-104, § 1100.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6109. Appeals from Determinations of the Director.

Any person aggrieved by a determination or failure to act of the director may appeal the matter to the Commonwealth Trial Court. The court shall uphold the action of the director if it is supported by evidence found in the record taken as a whole. The court may hold a trial de novo on disputed issues of fact.

Source: PL 3-104, § 1103.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."

#### § 6110. Authority of Director: Revocation of Licenses.

If in the opinion of the director a bank in carrying on its business, in the Commonwealth or elsewhere, is contravening the provisions of any applicable law, order, or regulations made pursuant to this division, the director may request that the bank take steps to rectify the matter. If the bank fails to rectify the matter, the director may after notice and hearing in accordance with the provisions of the Administrative Procedure Act (1 CMC § 9101 et seq.), issue an order revoking, suspending, limiting, or restricting any license of the bank and may proceed to request the Commonwealth Trial Court to appoint a receiver to wind up the business of the bank in the Commonwealth.

Source: PL 3-104, § 500.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."

#### § 6111. Revocation of Licenses: Hearings.

The director shall conduct hearings pursuant to the provisions of the Administrative Procedure Act (1 CMC § 9101 et seq.), prior to ordering any action under 4 CMC § 6110 where the legal rights, duties, or privileges of specific banks are conditioned, limited, suspended or revoked.

Source: PL 3-104, § 501.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth

in the commission comment to 1 CMC § 2001.”

#### § 6112. Additional Adjudicatory Powers.

(a) The director may subpoena witnesses, compel their attendance, require the production of evidence, administer an oath, and examine any person under oath in connection with any investigation, hearing, or other subject relating to a duty imposed upon or a power vested in the director. These powers shall be enforced by the Commonwealth Trial Court. An individual who claims a privilege against self incrimination may nevertheless be compelled to testify, but the individual may not be prosecuted or subjected to a penalty or forfeiture on account of anything concerning which the individual has testified under such compulsion, except for perjury committed while testifying. Removal from an office or employment with a Commonwealth bank is not the imposition of a penalty or forfeiture.

(b) The director may, on petition of any interested person and after hearing, issue a declaratory order with respect to the applicability to any person, property or state of facts of this division or rule issued by the director. The order shall bind the director and all parties to proceeding on the state of facts alleged, unless it is modified or reversed by a court having jurisdiction. A declaratory order may be reviewed and enforced in the same manner as other orders of the director, and the refusal to issue a declaratory order shall be reviewable.

(c) No person may be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the director, notwithstanding a subsequent decision by a court invalidating the order, regulation or definition.

Source: PL 3-104, § 106.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the “Commonwealth Judicial Reorganization Act of 1989,” provides that “[w]herever the term ‘Commonwealth Trial Court’ appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.”

#### § 6113. Court Review.

(a) Any person aggrieved and directly affected by an order of the director may appeal to the Commonwealth Trial Court within 30 days after issuance and notice of the order is served upon the party. The validity of an order may be tested only by an appeal and may not be placed in issue in an action to enforce it or in a prosecution for its violation except where substantial rights of the complainant are involved. The filing of a petition for review shall not stay enforcement of an order, but the court may order a stay upon such terms as it deems proper.

(b) The court:

- (1) May affirm the order of the director;
- (2) May direct the director to take action unlawfully withheld; or
- (3) May reverse or modify the order of the director if the order:
  - (A) Was issued pursuant to an unconstitutional statutory provision;
  - (B) Was in excess of statutory authority;
  - (C) Was issued upon unlawful procedure; or

(D) Is not supported by the evidence in the record and the court may require a trial de novo on disputed issues of fact.

Source: PL 3-104, § 107.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the “Commonwealth Judicial Reorganization Act of 1989,” provides that “[w]herever the term ‘Commonwealth Trial Court’ appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court.”

#### § 6114. Legal Assistance.

The director shall utilize the office of the Attorney General or its designee for legal assistance and representation in carrying out the provisions of this division.

Source: PL 3-104, § 108.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6115. Banking Interest of Officers and Employees.

No officer or employee of the department may be an officer, director, trustee, attorney, owner, shareholder

or partner in any bank, or, except as hereinafter provided, receive, directly or indirectly, any payment or gratuity from any such organization, or be indebted to any bank, or engaged in the negotiation of loans for others with any such bank. This provision shall not prohibit being a depositor or borrower on the same terms as are available to the public generally or, in the case of the director, being indebted to a bank upon:

- (1) A mortgage loan upon the mortgagor's own home;
- (2) An installment debt transferred to a bank in regular course of business by a seller of household goods or automobiles purchased by the employee; or
- (3) Other installment debt of a personal nature, not to exceed \$25,000, without approval of the Commonwealth Attorney General.

Source: PL 3-104, § 109.

#### § 6116. Annual Report.

The director shall report to the Governor and the legislature within 60 days after the end of each fiscal year. The report shall include a summary of all major changes in the banking business since the last previous report and a statement of the most recent reported condition of each bank. The director may also make recommendations for banking legislation.

Source: PL 3-104, § 1102.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### CHAPTER 2. Banking Organization.

#### Article 1. Organization and Corporate Structure of Commonwealth Banks.

##### § 6201. Applicability of Article.

##### § 6202. General Corporate Powers.

##### § 6203. Capital Structure.

##### § 6204. Incorporators.

##### § 6205. Shareholders. [Repealed.]

##### § 6206. Notice of Intention.

##### § 6207. Organization Expenses.

##### § 6208. Application for Charter.

##### § 6209. Public Hearing.

##### § 6210. Determination on Application for Charter.

##### § 6211. Reimbursement of Officer, Director or Employee for Expenses in Defending Suits.

##### § 6212. Banking License.

##### § 6213. Amendment of Charter; Change of Location.

##### § 6214. Directors and Officers.

##### § 6215. Deposit Insurance: Membership in Federal Reserve System.

##### § 6216. Transition Provision.

##### § 6201. Applicability of Article.

Unless otherwise specified, this article applies only to Commonwealth banks. For purposes of this article, "bank" means a bank chartered by the Commonwealth.

Source: PL 3-104, § 200.

Commission Comment: See the comment to 4 CMC § 6210.

##### § 6202. General Corporate Powers.

(a) A Commonwealth bank may be organized to exercise the powers provided in this division and such general corporate powers as are appropriate to its purpose and contained in its charter.

(b) A Commonwealth bank shall, without specific mention being made in its charter, have all the powers conferred by this division and the following additional general corporate powers:

- (1) To continue perpetually as a corporation;
- (2) To sue and be sued, complain and defend, in its corporate name;
- (3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced;
- (4) To make, alter, amend, and repeal bylaws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation;

- (5) To elect or appoint and remove officers and agents of the bank and to define their duties and fix their compensation;
- (6) To adopt and operate reasonable bonus and pension plans for officers and employees; and
- (7) To make contributions to or for the use or benefit of:
  - (i) The United States, any state, territory, or political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes; or
  - (ii) A corporation, trust or community chest fund, or foundation created or organized in the United States, or of any state or territory or of the District of Columbia, or of any possession of the United States including the Marshall Islands, Federated States of Micronesia and Palau and organized and operated exclusively for religious, charitable, scientific, veteran rehabilitation service, literary or education purposes, or for the prevention of cruelty to children or animals, no substantial part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; to the extent authorized, approved or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its articles of incorporation, or its bylaws or by resolution duly adopted by its stockholders.

(c) In addition to its other powers, a Commonwealth bank which is authorized by its charter to exercise trust powers shall, upon proper qualification under this division, have the power to act as a fiduciary in any capacity, including but without limitation as registrar or transfer agent, as fiscal agent or attorney-in-fact and the power to receive, manage and apply sinking funds.

(d) Any Commonwealth bank desiring to engage in the business of banking in the Commonwealth shall make application for its charter and licenses to the director pursuant to this chapter.

(e) A Commonwealth bank operating under this division shall, in addition to specific powers conferred by this division, have such powers as may be necessary to qualify as a trustee or custodian under the Northern Mariana Islands Retirement Fund, the Mariana Public Land Trust Fund, the Northern Mariana Islands Social Security Fund, the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended, and the Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1001 et seq.]; provided, that any funds held in such capacity shall be invested only in a savings account or time deposit of the institution.

Source: PL 3-104, §§ 201-202.

Commission Comment: The Self-Employed Individuals Tax Retirement Act of 1962 is codified in Title 26 of the United States Code.

#### § 6203. Capital Structure.

A bank shall at all times have paid-in-cash capital of not less than \$500,000.

Source: PL 3-104, § 203.

#### § 6204. Incorporators.

A Commonwealth bank may be organized by three or more persons acting on their own behalf or by an attorney licensed to practice in the Commonwealth.

Source: PL 3-104, § 204.

#### § 6205. Shareholders. [Repealed.]

Source: PL 8-3, § 2 (repealing PL 3-104, § 204).

#### § 6206. Notice of Intention.

(a) The incorporators shall file with the director a notice of intention to organize a Commonwealth bank. The notice shall state:

- (1) The name, residence and occupation of each incorporator, and the amount of stock subscribed and paid for by each;
- (2) The name and address of an individual within the Commonwealth to whom notice to all the incorporators may be sent;
- (3) The total capital, the number of shares of each class and the par value of the shares of each class of the proposed Commonwealth bank;
- (4) Whether it is intended that the proposed Commonwealth bank shall have trust powers; and
- (5) The municipality in which the proposed Commonwealth bank is to be located.

(b) The director may order the incorporators not to accept any stock subscriptions or to cease accepting subscriptions if the director determines that the notice does not comply with the provisions of this section, or that the incorporators are proceeding unlawfully or are not acting in good faith. If the notice of intention or any accompanying documents do not comply with the requirements of this section, the director shall, within 20 days

after the receipt of those materials, return them to the incorporators, calling attention to the defect or defects in them.

(c) It is unlawful for any person to accept any stock subscription until 30 days after filing a notice of intention or in violation of an order of the director, and any such subscription shall be enforceable only by the director and only to the extent the director determines it to be necessary to protect depositors or the public.

Source: PL 3-104, § 206; amended by PL 8-3, § 2, modified.

Commission Comment: For the penalty for violating subsection (c), see 4 CMC § 6813. PL 8-3, § 2(e), requiring deletion of any reference to 4 CMC § 6205 (a repealed section) in several specified sections, failed to include this section. The commission rectified the error by deleting former subsection (a)(6) of this section, which referred to the repealed section.

With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6207. Organization Expenses.

(a) Each subscriber at the time he or she subscribes to the stock of a proposed Commonwealth bank shall pay in cash a sum at least equal to five percent of the par value of the stock into a fund to be used to defray the expenses of organization. No organization expense may be paid out of any other funds of the bank. Upon the grant of a charter any unexpended balance shall be transferred to surplus. If no application for a charter has been made within six months of the filing of a notice of intention, or any additional period allowed by the director, or if the application has been finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The director may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organization expenses.

(b) No payment shall be made from the organization expense fund for securing subscriptions to stock.

(c) Organizational expenses may be counted as part of paid-in capital under 4 CMC § 6203(a)(2).

Source: PL 3-104, § 207.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6208. Application for Charter.

(a) After the capital stock has been fully subscribed, the incorporators may apply to the director for the charter. The incorporators shall submit:

(1) A proposed charter in triplicate in such form as the director shall prescribe containing the following information:

(A) The name of a Commonwealth bank;

(B) If the Commonwealth bank is to exercise trust powers, a statement to that effect;

(C) The island on which it is to be located;

(D) The amount of capital, the number of shares of each class, the relative preferences, powers and rights of each class, the par value of the shares of each class and the amount of the paid-in surplus;

(E) A statement whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of stockholders;

(F) Such other proper provisions to govern the business and affairs of the Commonwealth bank as may be desired by the incorporators.

(2) An application in such form and containing such information as the director requires, including the following:

(A) The name, residence and occupation of each subscriber and the number of shares for which he or she has subscribed;

(B) The past and present connections with any bank, other than as a customer on terms generally available to the public, of each director and each subscriber to more than five percent of the capital stock;

(C) The address at which it is proposed that the Commonwealth bank do business, or, if the address is not known, the area within the municipality in which it is proposed that the business be located;

(D) All information necessary to sustain the applicant's burden of showing the requirements of 4 CMC § 6210(4) and (5) are met.

(b) If the application, the proposed charter or any other accompanying documents do not comply with the requirements of this division, the director shall within 20 days after receiving them, return them to the incorporators, calling attention to the defect or defects in them. If the application, proposed charter and accompanying documents, if any, are not so returned by the director within 20 days of their receipt they shall be deemed to have been filed with the director.

(c) The incorporators shall mail notice of the application to each bank doing business in the island in which the proposed bank is to be located, and also to such persons and organizations as the director may designate. The director shall also require publication of the notice. The application shall be public information.

Source: PL 3-104, § 208.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6209. Public Hearing.

If there are objections to the application based on the fact the applicant does not meet the requirements of this division, the director shall hold a hearing limited to issues necessary to determining whether the application meets all requirements of this division.

Source: PL 3-104, § 209.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6210. Determination on Application for Charter.

(a) When an application for a charter has been filed with the director, the director shall make or cause to be made a careful investigation and examination relative to the following:

(1) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed Commonwealth bank.

(2) The character, financial responsibility, banking or trust experience and business qualifications of those proposed as officers of the bank.

(3) The character, financial responsibility, business experience and standing in the community of the prospective stockholders and of those proposed as directors of the bank.

(4) The need in the island where the bank would be located for banking or banking and trust facilities, or additional banking or banking and trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking and trust facilities therein.

(5) The ability of the Commonwealth to support the proposed bank, giving consideration to:

(i) The competition offered by existing banks and other financial institutions;

(ii) The banking history of the Commonwealth;

(iii) The opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the territory, with particular regard to their stability, diversification and size; and

(iv) If the bank is to exercise trust powers, the opportunities for profitable employment of fiduciary services.

(6) Such other facts and circumstances bearing on the proposed bank and its relation to the Commonwealth as in the opinion of the director may be relevant.

(b) The director shall compile a report of the results of the investigation, together with all papers, correspondence and information in the director’s possession relating to the application for a charter.

(c) Within 90 days after the filing of the application, the director shall consider the findings and all other relevant available information, and shall in his or her discretion approve or disapprove the application, but the director shall not approve the application until the director has ascertained to his or her satisfaction:

(1) That conditions in the Commonwealth and on the island in which the bank would transact business afford reasonable promise of successful operation;

(2) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division;

(3) That the proposed capital is not less than the minimum required under this division;

(4) That those proposed as officers and directors have sufficient experience, ability and standing to afford reasonable promise of successful operation;

(5) That the name of the proposed bank does not resemble so closely as to be likely to cause confusion the name of any other bank transacting business in the Commonwealth or which previously had transacted business in the Commonwealth during the last 20 years; and

(6) That the applicants have complied with all applicable provisions of this division including making a showing to allow the director to find a need for an additional bank as set forth in subsections (a)(4) and (a)(5) of this section.

(d) If the director approves the application, the director shall grant a charter by indorsing the approval on all copies, retaining one copy in the department's files and returning one copy to the incorporators within 20 days of the director's action approving the application.

(e) If the director disapproves the application, the director shall make public the disapproval and mail notice of the disapproval to the incorporators within 20 days after the action disapproving the application.

Source: PL 3-104, § 210; amended by PL 8-3, § 2, modified.

Commission Comment: PL 8-3, § 2(c) contained a typographical error (a direction to repeal "1 CMC § 6201(a)(6)"); the commission rectified the error by deleting former subsection (a)(6) of this section and renumbering a remaining subsection.

With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6211. Reimbursement of Officer, Director or Employee for Expenses in Defending Suits.

The bylaws of a Commonwealth bank may provide that it shall indemnify every officer, director or employee, and his or her heirs, executors and administrators, against judgments resulting from and the expenses reasonably incurred by that person in connection with any action based upon any alleged act or omission on his or her part as an officer, director or employee of the Commonwealth bank, including any action based upon any alleged act or omission on his or her part as an officer, director or employee of the Commonwealth bank, except in relation to matters as to which that person shall be finally adjudged in the action to be liable for negligence or misconduct, and except that, in the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commonwealth bank is advised by counsel that in the opinion of counsel the person to be indemnified was not liable for negligence or misconduct. The foregoing right of indemnification shall not be exclusive of other rights to which the officer, director or employee may be entitled.

Source: PL 3-104, § 211.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6212. Banking License.

(a) It is unlawful for a Commonwealth bank to perform any act other than to perfect its organization, obtain and equip a place of business and otherwise prepare to do business before receiving a banking license.

(b) Application for a banking license shall be made to the director and shall contain:

(1) A statement that the minimum capital has been paid in;

(2) The name, address and business and professional affiliations of each director and executive officer;

(3) The name and address of each stockholder of a legal or beneficial interest of more than five percent and the number of shares held by the stockholder;

(4) The address at which the bank will operate;

(5) A statement that all of the bylaws adopted have been attached as an exhibit to the application;

(6) A verified statement that the bank meets the requirements of 4 CMC § 6226(f);

(7) Such other information as the director may require to enable the director to determine whether the conditions for the issuance of a banking license have been met; and

(8) An initial application fee of \$5,000; provided, that the application fee shall be a one-time fee applicable only to Commonwealth banks chartered after February 6, 1984.

(c) If the application for a banking license or any accompanying documents do not comply with the requirements of this division, the director shall, within 20 days after receipt of the application, return them to the incorporators, calling attention to the defect or defects therein. If the application and accompanying documents are not returned within the 20 day period, they shall be deemed to have been filed with the director.

(d) The director shall approve or deny the application for a banking license within 30 days after the application is deemed complete. The director shall approve the application if:

(1) The minimum capital has been fully paid in cash;

(2) Appropriate bylaws have been adopted;

(3) Any conditions imposed by the director in granting the charter have been fulfilled; and

(4) The requirements of this division have been satisfied.

(e) If the director approves the application, the director shall, within 20 days of the action, collect an annual banking license fee of \$1,000, issue the banking license, and mail the same to the incorporators. If the director denies the application, the director shall, within 20 days of the action, mail a notice of denial to the incorporators, stating in the notice the reason or reasons for denying the application.

(f) If no application for a banking license is filed within one year following the grant of a charter, or any

additional period allowed by the director for good cause, or if a banking license has been finally denied, or if the bank fails to commence business within one year after the issuance of a certificate of authority or any additional period allowed by the director, the charter shall be forfeited, and the bank shall be liquidated in accordance with the orders of the director. If an improper expenditure has been made, the director may order the persons who were incorporators or directors at the time to restore the sum by equal contributions.

(g) Notwithstanding compliance with the licensing requirements of this section, a Commonwealth bank that is a retail bank shall also comply with the provisions of article 3 of this chapter [4 CMC § 6231 et seq.].

Source: PL 3-104, § 212; amended by PL 8-3, § 2.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6213. Amendment of Charter; Change of Location.

(a) A Commonwealth bank may apply to the director to amend its charter.

(b) An application for an amendment of the charter changing the authorized capital or the number and par value of the shares or to acquire or abandon trust powers must be authorized by the vote of two-thirds of the outstanding voting stock voted at a meeting of the stockholders. Any other application may be authorized by the vote of a majority of the outstanding voting stock voted at a meeting of the stockholders.

(c) Notice of the application shall be sent to such persons and organizations as the director may require.

(d) The director shall approve an application:

(1) To change the name of the corporation if the proposed name is not deceptive or misleading.

(2) To change the number and par value of the shares without altering the total capital unless the change will inequitably affect the interest of any stockholder and the bank does not have sufficient surplus and undivided profits to pay dissenting shareholders the fair value of their shares determined in accordance with regulations of the director.

(3) To increase the total capital by increasing the amount of common stock, but an amendment increasing the total capital shall not become effective until the director finds that the new capital has been fully paid in cash.

(e) In making the determination, the director shall be guided by the standards prescribed for the approval of an application for a charter, insofar as they are reasonably applicable.

Source: PL 3-104, § 213.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6214. Directors and Officers.

(a) The affairs of a Commonwealth bank shall be managed by a board of directors which shall exercise its powers and be responsible for the discharge of its duties. The number of directors, not less than five nor more than 25, shall be fixed by the bylaws and the number so fixed shall be the board of directors, regardless of vacancies.

(b) The board of directors shall meet at least semiannually. This meeting shall be in the Commonwealth.

Source: PL 3-104, § 214, modified.

#### § 6215. Deposit Insurance: Membership in Federal Reserve System.

Except for those banks covered by 4 CMC § 6216, a Commonwealth bank which is also a retail bank shall obtain insurance of its deposits by the United States or any agency thereof prior to conducting any banking business and may acquire and hold membership in the Federal Reserve System.

Source: PL 3-104, § 215.

#### § 6216. Transition Provision.

(a) Commonwealth banks which have a valid banking license meeting the present requirements of regulations issued by the Department of Commerce and Labor covering bank licensing, have at least five resident employees, are open to the general public, and are actively conducting a banking business with at least 50 depositors and borrowers as of February 6, 1984, shall comply with 4 CMC §§ 6203, 6212 and 6214 as of February 1, 1984; provided, the director may extend the time for compliance for up to one year upon a showing of good cause. Those banks need not comply with 4 CMC § 6215.

(b) If the director certifies that Commonwealth government or private depositor insurance or bonding is available to Commonwealth banks, they shall obtain the bonding or insurance within six months of such certification. In addition, any such Commonwealth bank may secure deposits of less than \$5,000 by obligations of the governments of the Commonwealth and the United States, its agencies, or chartered corporations, and such

security shall have the highest priority lien that the Commonwealth can lawfully accord in the event of a bank failure or bankruptcy.

(c) A Commonwealth bank that meets the requirements of 4 CMC § 6227(b) shall have until June 1, 1987, in which to comply with 4 CMC § 6215.

Source: PL 3-104, § 216, modified; amended by PL 4-48, § 1.

Commission Comment: With respect to the references to the “Department of Commerce and Labor” and the “director” of that agency, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

## Article 2. General Licensing of Banks.

§ 6221. Banking License Required.

§ 6222. State, National, Micronesian, and Foreign Banks.

§ 6223. Qualifications for Issuance: State or National Bank License.

§ 6224. Qualifications for Issuance: Foreign Bank License.

§ 6225. Qualifications for Issuance: Commonwealth Bank License.

§ 6226. Application for Banking License.

§ 6227. Transition of Existing License.

§ 6228. Exception to any Requirement of Deposit Insurance.

§ 6229. Loans.

§ 6221. Banking License Required.

(a) No person may operate a bank or engage in banking business from within the Commonwealth, whether or not the business is carried on in the Commonwealth, without having been issued the licenses required by this division.

(b) Every person who knowingly and willfully violates the provisions of this section may be found guilty of a misdemeanor punishable by a fine not exceeding \$50,000 or imprisonment for a period not exceeding one year, or both.

Source: PL 3-104, § 230.

§ 6222. State, National, Micronesian, and Foreign Banks.

Subject to the approval of the director pursuant to this division, a state, national, Micronesian, or foreign bank may establish an office in the Commonwealth and engage in the business of banking in the Commonwealth, provided it meets the requirements of a Commonwealth bank as found in 4 CMC §§ 6209 and 6210.

Source: PL 3-104, § 231; amended by PL 8-3, § 2.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6223. Qualifications for Issuance: State or National Bank License.

The director shall issue a banking license when a state or national bank has complied with the following requirements:

(a) The director has approved the application submitted by the bank pursuant to 4 CMC § 6226.

(b) The annual license fee of \$1,000 has been paid to the director.

(c) The director finds that the bank meets the requirements found in 4 CMC §§ 6209 and 6210.

Source: PL 3-104, § 232; amended by PL 8-3, § 2.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6224. Qualifications for Issuance: Foreign Bank License.

The qualifications, fees, and conditions of a foreign bank license shall be pursuant to chapter 3 of this division [4 CMC § 6311 et seq.].

Source: PL 3-104, § 233.

§ 6225. Qualifications for Issuance: Commonwealth Bank License.

The qualifications, fees, and conditions for a Commonwealth bank license shall be pursuant to 4 CMC § 6212.

Source: PL 3-104, § 234.

§ 6226. Application for Banking License.

Except as otherwise specifically provided in 4 CMC §§ 6212 and 6234, an application for any type of banking license shall be made to the director on forms furnished by the director and in accordance with the regulations of the director. The application shall include the following:

- (a) The name of the applicant.
- (b) The location of the principal place of business of the applicant.
- (c) A copy of the articles of incorporation, bylaws, and corporate charter of the applicant.
- (d) The name of one of the applicant's officers who shall be the bank's authorized agent in the

Commonwealth and the name of an alternate officer who shall serve in that capacity in the absence of the first nominee.

(e) Complete information and details with respect to the character, criminal record, business activities, financial affairs, and business associates of the directors, officers, and shareholders owning more than five percent of the stock of the applicant, which information and details shall cover at least a 10-year period immediately preceding the date of filing of the application.

(f) That the applicant in his initial license application made a sufficient showing that the director found the application met the requirements of 4 CMC § 6210 unless the applicant was excused from the finding by 4 CMC §§ 6216 or 6227. If no determination has been made under 4 CMC § 6210, the applicant must file an application and meet all the requirements of 4 CMC §§ 6209 and 6210.

(g) Such other information and details as the director may require.

(h) An application fee of \$5,000, provided that the fee shall be a one-time fee applicable only to banks applying for a banking license under this section after February 6, 1984.

Source: PL 3-104, § 235; amended by PL 8-3, §§ 2 (modified) and 4.

Commission Comment: PL 8-3, § 2(e), requiring deletion of any reference to 4 CMC § 6205 (a repealed section) in several specified sections, failed to include former subsection (g) of this section. The commission rectified the error by revising former subsection (g) of this section, now subsection (f).

With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6227. Transition of Existing License.

(a) Every state and national bank which has a valid Commonwealth banking license, has at least five resident employees, and is actively conducting business on February 6, 1984, may continue conducting banking business from within the Commonwealth without making application to the director pursuant to 4 CMC § 6226. Those banks shall, no later than 60 days from February 6, 1984, satisfy the director that they are in compliance with 4 CMC § 6223(a) and (b), except those banks shall be deemed to meet the requirements of 4 CMC § 6226(f) and (g). Banks subject to this section shall comply with this division and renew their licenses pursuant to 4 CMC § 6243, including payment of annual renewal fees. No application fee under 4 CMC § 6226 is required of banks subject to this section.

(b) Notwithstanding subsection (a) of this section, upon application to the director on such forms as he may require, a Commonwealth bank which had been issued a renewal for its Commonwealth retail banking license as of February 6, 1984, but had not yet transacted business as of such date may renew its retail banking license. The license shall be conditioned upon the immediate compliance by the bank with this division, except that the bank shall have until June 1, 1987, to comply with 4 CMC § 6215 by obtaining insurance of its deposits.

Source: PL 3-104, § 236; amended by PL 4-48, § 1.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6228. Exception to any Requirement of Deposit Insurance.

Notwithstanding the provisions of 4 CMC §§ 6215 and 6232, no bank shall be required to obtain deposit insurance as a condition of obtaining a charter or any form of license if that bank is able to demonstrate, upon independent and verifiable authentication, that it has assets in excess of \$100,000,000,000.

Source: PL 8-3, § 3, modified.

Commission Comment: PL 8-3 took effect September 30, 1992.

§ 6229. Loans.

At least 50 percent of the amount of all Commonwealth loans a bank annually makes to borrowers shall be made for projects, purposes and uses represented by the borrower to occur in the Commonwealth. Failure to comply

with this section shall be grounds for revocation of the Commonwealth banking license by the director.

Source: PL 8-3, § 5.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### Article 3. Special Licenses.

§ 6231. Retail Banking License Required.

§ 6232. Qualification for Retail Banking License.

§ 6233. Application for Special Licenses.

§ 6234. Transition.

§ 6231. Retail Banking License Required.

(a) Any Commonwealth-chartered or state, national, Micronesian or foreign bank otherwise licensed to do banking business in the Commonwealth may apply for a retail license pursuant to this article. The purpose of a retail license is to protect depositors and borrowers. No bank may accept or hold deposits except in compliance with and licensed pursuant to this article.

(b) Every person who knowingly and willfully violates the provisions of subsection (a) of this section may be found guilty of a misdemeanor punishable by fine not exceeding \$50,000, or imprisonment for a period not exceeding one year, or both.

Source: PL 3-104, § 240.

§ 6232. Qualification for Retail Banking License.

A Commonwealth-chartered bank or a state, national, or foreign bank shall be issued a retail banking license by the director upon proof of the following:

(a) Capital stock paid-up-in-cash of not less than \$500,000;

(b) Insurance of deposits of less than \$5,000 by the United States or any agency thereof, including but not limited to the Federal Deposit Insurance Corporation, unless exempted by 4 CMC § 6216; and

(c) Payment of an annual license fee of \$1,000.

Source: PL 3-104, § 241; amended by PL 8-3, § 2.

§ 6233. Application for Special Licenses.

Application for retail and other special licenses required in this article shall be made to the director on forms furnished by the director in accordance with regulations of the director and shall include the following:

(a) The name of the applicant;

(b) Whether a retail or other special license is sought;

(c) Copies of existing licenses and charters if the application is for a retail banking license;

(d) The location of the principal place of business within the Commonwealth; and

(e) Such other information as the director may at his discretion require.

Source: PL 3-104, § 242; amended by PL 8-3, § 2.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6234. Transition.

(a) Any state, national, or Micronesian bank operating as a retail bank on February 6, 1984, provided the bank meets the requirements of 4 CMC § 6227, shall comply with the license and fee requirements of this article simultaneously with the next annual renewal of banking licenses required pursuant to 4 CMC § 6243.

Source: PL 3-104, § 243.

### Article 4. Restrictions on Licenses.

§ 6241. Assignment of Bank License.

§ 6242. Posting and Inspecting of Licenses.

§ 6243. Annual Fees; Renewal of Licenses.

§ 6241. Assignment of Bank License.

No banking license may be purchased by a bank broker, or assigned in whole or in part, without the prior approval of the director.

Source: PL 3-104, § 250.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6242. Posting and Inspecting of Licenses.

All licenses issued under the provisions of this division shall be posted by the licensee and kept posted at all times in a conspicuous place in the bank for which the license was issued until replaced by a succeeding license. In addition, licensed retail banks shall post in a conspicuous place in the bank the nature of the required deposit insurance.

Source: PL 3-104, § 251.

#### § 6243. Annual Fees; Renewal of Licenses.

(a) A bank shall pay an annual fee of \$1,000 to the director for issuance of any type of banking license and for each renewal thereafter.

(b) Subject to the power of the director to deny, revoke, suspend, condition, or limit licenses, any license in force shall be renewed by the director upon proper application for renewal and payment of license fees as required by law and the regulations of the director. The director may require by regulation such other information as the director deems necessary and consistent with this division for renewal. A bank license shall be valid for one year from the date of its issuance and must be renewed on or before its expiration date.

Source: PL 3-104, § 252.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### Article 5. Merger, Conversion, Consolidation, Liquidation, Dissolution, and Reorganization.

#### § 6250. Regulations for Mergers, Liquidations, and Other Significant Events.

(a) The director shall provide by regulation administrative procedures and depositor protections for banks which desire to undertake mergers, conversions, or consolidations.

(b) The director shall provide by regulation administrative procedures and depositor protections for the liquidation, dissolution, and reorganization of banks.

Source: PL 3-104, § 260.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### Article 6. Branch Banks.

#### § 6260. Branch Banks.

A bank engaging in the banking business in the Commonwealth may operate such branch banks as the director determines is in the public interest according to the standards set forth in 4 CMC § 6210(a)(4) and (5). State banks may only operate branches in the Commonwealth if the state or territory of their incorporation authorizes a Commonwealth bank to engage in branch banking in its territory and that bank demonstrates that the branch is in the public interest and meets the criteria set forth in 4 CMC § 6210(a)(4) and (5).

Source: PL 3-104, § 270.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

## CHAPTER 3. Foreign Banking Corporations and Foreign Exchange.

### Article 1. Foreign Banking Corporations.

#### § 6311. Foreign Banking Corporations.

The director may specifically provide for the operation of foreign banking corporations within the Commonwealth, provided the foreign bank meets the requirements for a Commonwealth bank. The director may establish by regulation the conditions and restrictions upon the business of foreign banking corporations as the director deems consistent with this division and in the public interest. Notwithstanding compliance with any

regulations, conditions, or restrictions promulgated pursuant to this section, any foreign bank that is a retail bank must also be licensed pursuant to article 3 of chapter 2 of this division [4 CMC § 6231 et seq.] and must in its initial application have met the requirements of 4 CMC §§ 6208, 6209 and 6210.

Source: PL 3-104, § 300; amended by PL 8-3, § 2.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

## Article 2. Foreign Exchange.

### § 6351. Foreign Exchange.

The director may specifically provide for the operation of the business of selling foreign currency notes or receiving money for the purpose of transmitting the money or its equivalent to foreign countries. The director may establish by regulation such conditions and restrictions upon the foreign exchange business as the director deems consistent with this division and in the public interest.

Source: PL 3-104, § 340.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

## CHAPTER 4. Examination and Reports; Confidentiality.

### Article 1. Examinations and Reports.

#### § 6411. Required Reports.

#### § 6412. Notice of Sale of Stock.

#### § 6413. Audit Fees.

#### § 6414. Powers and Duties of Director in Connection with Examinations.

#### § 6415. Penalties for Violation of 4 CMC §§ 6411-6414.

#### § 6416. Preservation of Bank Records.

### § 6411. Required Reports.

(a) Annual Report. The director may examine the condition of any bank conducting banking business from within the Commonwealth at any time. Each bank shall annually submit consolidated written financial statements and a separate annual report covering the financial condition and activities of the bank from within the Commonwealth. The documents shall be signed by the bank’s chief financial officer and certified to be true and correct and in accordance with generally accepted accounting principles by a firm of independent certified public accountants. Only summary examinations and reports shall be required in respect of fiduciary activities which are subject to court accountings. A report of examination shall be sent by the director to the bank examined.

(b) Bank-Related Corporation. The director may annually examine any corporation, the majority of the stock of which is owned by or which is found by the director to be controlled by a bank licensed by the Commonwealth.

(c) Substitute Reports. The director may accept the reports of state, national, Federal Reserve, Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation examiners or nationally recognized auditing firms found by the director to be capable of auditing a bank in lieu of a separate examination.

Source: PL 3-104, § 400.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### § 6412. Notice of Sale of Stock.

Every bank shall within 60 days notify the director of any sale or transfer of 10 percent or more of the voting stock in the bank and shall provide the information required in 4 CMC § 6226(e) as to the transferee of the shares. In addition, the bank must certify that the bank is in continuing compliance with 4 CMC § 6205.

Source: PL 3-104, § 401.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### § 6413. Audit Fees.

The director shall charge an examination fee based on cost per hour per examiner and other related

reasonable expenses for any banks examined by the director or his staff. These fees shall be established by regulation and shall be paid to the General Fund.

Source: PL 3-104, § 402.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6414. Powers and Duties of Director in Connection with Examinations.

(a) In the performance of his functions under this law and subject to the provisions of subsection (b) of this section, the director shall be entitled at all reasonable times to have access to the books, records, vouchers, documents, cash and securities of any bank, and to call upon the manager or any officer designated by the manager of any bank for such information or explanation as the director may reasonably require for the purpose of enabling the director to perform his or her functions under this division.

(b) The director may have access to the account of a customer of a bank or to any information, matter, or thing relating to or concerning the affairs of any customer of a bank only pursuant to article 2 of this chapter [4 CMC § 6451 et seq.].

Source: PL 3-104, § 403.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6415. Penalties for Violation of 4 CMC §§ 6411-6414.

Any person who knowingly and wilfully fails to comply with any requirement of 4 CMC §§ 6411 through 6414 may be found guilty of a misdemeanor punishable by a fine not exceeding \$50,000 and imprisonment for a term not exceeding one year; provided, that if the act or omission was intended to defraud, the person may be found guilty of a felony punishable by a fine not exceeding \$100,000 and imprisonment for a term not exceeding two years.

Source: PL 3-104, § 404.

#### § 6416. Preservation of Bank Records.

(a) Every bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this section.

(b) Each bank shall retain permanently the minute books of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its investment ledger, its copies of bank examination reports, and all records which the director shall in accordance with the terms of this section require to be retained permanently. The director may require that certain records be reproduced and stored in a safe deposit either within or without the Commonwealth.

(c) All other bank records shall be retained for such periods as the director may require by regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. These periods may be permanent or for a lesser term of years. The regulations may from time to time be amended or repealed. Prior to issuing any such regulation the director shall consider:

(1) Actions at law and administrative proceedings in which the production of bank records might be necessary or desirable;

(2) Commonwealth, state, and federal statutes of limitation applicable to such actions or proceedings;

(3) The availability of information contained in bank records from other sources;

(4) Such other matters as the director deems pertinent in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of the Commonwealth in having bank records available.

(d) Any bank may dispose of any records which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce the record in any action or proceeding.

(e) Any bank may cause any or all records at any time in its custody to be reproduced by the microphotographic process and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

Source: PL 3-104, § 405.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Article 2. Confidentiality.

§ 6451. Confidentiality of Information.

§ 6452. Disclosure by the Director.

§ 6453. Right to Privacy.

§ 6454. Financial Privacy Act Adopted.

§ 6451. Confidentiality of Information.

All information not required to be published elsewhere by any other authority to whose jurisdiction a licensee shall be subject, and all information other than that required by the provisions of this division to be made public by the director or whose disclosure is made pursuant to court order, shall not be disclosed by any person employed or retained by the department, or any licensee into whose possession it shall come except as follows:

(a) All reports and information that have come into the possession of the director or the department whether required by this division or not, shall be preserved for three years and thereafter until the director orders them destroyed.

(b) The director and every employee of the department shall maintain the secrecy of all information they receive as to matters relating to this division or any licensee or applicant for a license which comes into their knowledge and they shall not communicate such matters to any person outside the department except for the purpose of carrying into effect this division and only as provided by this division.

(c) No employee, agent, representative of, or person retained by the department, may be required to produce in any court, any matter relating to the licensees or applicants for a license pursuant to this division, coming under his or her notice in the performance of these duties in relation to the department except when it is necessary to so do for the purpose of carrying into effect any provision of this division.

(d) The Attorney General or his or her delegate may inspect all relevant records of any taxpayer who brings an action to set aside or review an action of the director or against whom an action or criminal proceeding has been instituted pursuant to this division.

(e) Any person who knowingly violates any provision of this section may be found guilty of a misdemeanor and shall be punished by a fine of not more than \$50,000 or imprisonment for a period of not exceeding one year, or both such fine and imprisonment.

Source: PL 3-104, § 700.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor" and the agency itself, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6452. Disclosure by the Director.

The director shall make the following disclosure of information supplied to it by an applicant or a licensee:

(a) The annual audited financial statements of each bank by publishing same in a newspaper of general circulation in the Commonwealth on or before 60 days following the close of the end of the licensee's business year;

(b) Such statistical information as will assist the Commonwealth government in planning and other functions of government.

Source: PL 3-104, § 701.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6453. Right to Privacy.

The right to privacy and the right to financial privacy protected by the Covenant, incorporating the terms of Constitution of the United States, and N.M.I. Const. art. I, § 10, of every customer of every bank shall be respected by each director, officer, agent, employee or any person employed or retained in any capacity by the bank within or without the Commonwealth and neither they nor any one of them disclose any financial record of any customer that may come into their possession to any governmental authority or any other person, except in full compliance with the provisions of 4 CMC § 6454. However, nothing shall preclude a bank from sharing credit information normally shared between lenders nor sharing information with its chosen auditor as is necessary to conduct a bank audit according to generally accepted accounting principles.

Source: PL 3-104, § 702, modified.

§ 6454. Financial Privacy Act Adopted.

The United States Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), is adopted as a statute

of the Commonwealth in its entirety except that for purposes of application as a Commonwealth statute “government authority” as originally defined in 12 U.S.C. § 3401(3) means “any agency or department of the Commonwealth or any officer, employee, or agent thereof.”

Source: PL 3-104, § 703.

## CHAPTER 5. Retail Banking Practices.

### Article 1. Accounts.

§ 6501. Chapter Applicability.

§ 6502. Interests on Accounts.

§ 6503. Payment of Items.

§ 6504. Transactions Outside Regular Banking Hours or on Holidays.

§ 6505. Deposit of Minor; School or Institutional Deposits.

§ 6506. Deposits in Two Names.

§ 6507. Deposits in Trust.

§ 6508. Final Adjustment of Statement of Account.

§ 6509. Adverse Claim to Bank Deposits.

§ 6510. Powers of Attorney.

§ 6511. Payment from Account When no Executor or Administrator has Qualified.

§ 6512. Transmitting Money: Foreign Exchange.

§ 6513. Dormant and Inactive Accounts and Unclaimed Funds.

§ 6514. Disclosure Requirement.

§ 6515. Fees and Other Charges.

§ 6501. Chapter Applicability.

Unless otherwise specified the provisions of this chapter apply to all banks and banking.

Source: PL 3-104, § 600.

§ 6502. Interest on Accounts.

A bank may maintain deposit accounts and pay interest on balances therein at rates which need not be uniform.

Source: PL 3-104, § 601.

§ 6503. Payment of Items.

So long as the balance in any account subject to withdrawal by or upon the order of a depositor equals or exceeds the amount of any item presented for payment, a bank may select from items which in the aggregate exceed the balance, the items to be paid in any order convenient to the bank.

Source: PL 3-104, § 602.

§ 6504. Transactions Outside Regular Banking Hours or on Holidays.

Nothing in any law of the Commonwealth shall in any manner whatsoever affect the validity of or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank because done or performed on any holiday or half-holiday or during any time other than regular banking hours; provided, that nothing herein shall be construed to compel any bank to operate outside of normal business hours.

Source: PL 3-104, § 603.

§ 6505. Deposit of Minor; School or Institutional Deposits.

(a) A bank may operate a deposit account in the name of a minor or in the names of two or more persons, one or more of whom are minors, with the same effect upon its liability as if the minors were of full age.

(b) Subject to such regulations as the board may prescribe for the protection of depositors, a bank may contract with the proper authorities of any elementary or secondary school, or of any institution caring for minors, for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such a school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for that purpose.

Source: PL 3-104, § 604.

§ 6506. Deposits in Two Names.

(a) When a deposit has been made or shall hereafter be made, in any bank in the names of two persons, payable to either, or payable to either or survivor, the deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of the persons, whether the other be living or not; and the receipt of acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank for any payment so made.

(b) No bank so paying any such survivor shall thereby be liable for any estate, inheritance or succession taxes due this Commonwealth.

Source: PL 3-104, § 605.

#### § 6507. Deposits in Trust.

(a) Whenever any deposit is made in any bank by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust has been given in writing to the bank; in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was made.

(b) No bank so paying any such survivor shall thereby be liable for any estate, inheritance, or succession taxes due this Commonwealth.

Source: PL 3-104, § 606.

#### § 6508. Final Adjustment of Statement of Account.

(a) When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to the depositor with like accompaniment of vouchers, if any, such account shall after the period of one year from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause.

(b) Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of 5 CMC §§ 3406 and 4406 of the Uniform Commercial Code of the Northern Mariana Islands to cases governed thereby.

(c) A statement of account may be rendered to a depositor by mailing the statement with supporting vouchers, if any, to the depositor's address as shown on the books of the bank.

Source: PL 3-104, § 607, modified.

#### § 6509. Adverse Claim to Bank Deposit.

Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause the bank to recognize the adverse claimant unless the adverse claimant shall also either procure a restraining order, injunction, or other appropriate process against the bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons or shall execute to the bank in form and with sureties acceptable to it, a bond, indemnifying the bank from any and all liability, loss, damage, costs and expenses, for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank; provided, that this section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting the relationship are also the facts showing reasonable cause for relief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of such claimant.

Source: PL 3-104, § 608.

#### § 6510. Powers of Attorney.

(a) A bank may continue to recognize the authority of an attorney authorized in writing to operate, in whole or in part, the account of a depositor, until it receives written notice of the revocation of his authority.

(b) Written notice of the death or adjudication of incompetency of the depositor shall constitute written notice of revocation of the authority of his attorney.

(c) Notwithstanding that a bank has received written notice of revocation of the authority of the attorney, it may, until 30 days after receipt of the notice, pay any item made, drawn, accepted or indorsed by the attorney prior to such revocation; provided, that the item is otherwise properly payable.

(d) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this

section.

Source: PL 3-104, § 609.

§ 6511. Payment from Account When no Executor or Administrator has Qualified.

(a) Where no executor or administrator of a deceased depositor has qualified and given notice of his or her qualifications to a bank, the bank may in its discretion and at any time after 30 days from the death of the depositor pay out of all accounts maintained with it by the deceased depositor in his or her individual capacity all sums which do not exceed \$5,000 in the aggregate and in the following order or priority in the case of conflicting claims.

- (1) To the executor named in any will known to the bank; or
- (2) In the absence of knowledge of a purported will naming a surviving executor to:
  - (A) The surviving spouse;
  - (B) The next of kin; or
  - (C) A creditor for expenses of the last illness or funeral.

(b) A bank may in its discretion and at any time after 60 days from the death of a depositor, whose residence address according to the books of the bank is outside the Commonwealth, pay the balance of his or her accounts, not exceeding \$5,000 in the aggregate, to an executor or administrator who has qualified in another territory or state unless the bank has received written notice of the appointment of an executor or administrator in the Commonwealth.

(c) No bank shall be liable for damages, penalty or tax by reason of any payment made pursuant to this section.

Source: PL 3-104, § 610.

§ 6512. Transmitting Money: Foreign Exchange.

(a) Any bank may accept money for transmissions and may transmit money.

(b) Any bank may buy and sell foreign exchange to the extent necessary to meet the needs of customers.

Source: PL 3-104, § 611.

§ 6513. Dormant and Inactive Accounts and Unclaimed Funds.

(a) If a savings account is inactive for 10 years and the passbook has not been presented for the posting of earned interest during the period, a bank may transfer the balance of the account to the Commonwealth Treasurer for the account of the depositor. For the purposes of this section, an account may be considered inactive if no deposits or withdrawals are made from the account.

(b) If a savings account is inactive for five years, and the passbook has not been presented for the posting of earned interest during the period, a bank may cease paying interest on the account until advised by the depositor or the depositor's representative that the account is active.

(c) If a checking account is inactive for two years and the depositor cannot be located, a bank may transfer the balance of the account to the Commonwealth Treasurer for the account of the depositor.

(d) Prior to transferring the balance of any accounts to the Commonwealth Treasurer as provided in subsections (a) and (c) of this section, the director shall notify the depositor in writing that the funds shall be transferred to the Commonwealth Treasurer within 60 days from the date of notification, and the transfer shall not occur prior to the 60 day period. If the whereabouts and address of the depositor cannot be ascertained, the director shall publish notice in a newspaper of general circulation for 60 days to the effect that the funds shall be transferred to the Treasurer of the Commonwealth and the transfer shall not occur prior to the 60-day period.

(e) If a bank holds unidentified deposits or other funds for three years, the owner of which cannot be determined by the bank, a bank may transfer the balance of the account to the Commonwealth Treasurer for the account of the depositor, in the event the depositor is determined at a later date.

(f) If a bank holds exchanges, bank drafts, cashier's checks, or drafts which have not been presented for payment for ten years, a bank may, if the owner cannot be located, transfer the balance of such account to the Commonwealth Treasurer for the account of the owner in the event the owner is located at a later date.

(g) If a bank holds unidentified loan payments for three years, a bank may transfer the balances of the account to the Commonwealth Treasurer for the account of the payor, in the event such payor is later determined.

(h) Before transferring funds to the Commonwealth Treasurer under this section, the transferring bank may deduct all sums or costs due the bank, including cost of publication or other notice required by this section. Receipt by the Commonwealth Treasurer for the deposits shall be a full discharge to the transferring bank of all liabilities to the depositor or owner of the funds.

(i) The Commonwealth Treasurer upon receiving sums of money pursuant to this section shall furnish the

transferring bank with a receipt for the sums transferred, and shall deposit the sums in the General Fund.

(j) The Commonwealth Treasurer shall maintain accurate records of these sums in accordance with regulations adopted by the director. The sums may be claimed at any time by the rightful owner or owners of such sums upon furnishing proof satisfactory to the Commonwealth Treasurer of their right to the funds. Funds deposited with the Commonwealth Treasurer pursuant to this section shall not accrue interest. The Commonwealth Treasurer shall not be liable for damages or penalties for any payment to a claimant of funds deposited pursuant to this section.

(k) The director may adopt rules and regulations as necessary to implement the provisions of this section.

Source: PL 3-104, § 612.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6514. Disclosure Requirement.

Each retail bank shall comply with the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.) and all laws obligatory on the Commonwealth.

Source: PL 3-104, § 613.

#### § 6515. Fees and Other Charges.

Fees and other charges assessed by a retail bank for depositor and other customer services shall be made available to the depositor or customer.

Source: PL 3-104, § 614.

### Article 2. Safe Deposit and Safekeeping.

#### § 6521. Definitions.

#### § 6522. Authority to Engage in Leasing Safe Deposit Facilities: Subsidiary Company.

#### § 6523. Access by Fiduciaries.

#### § 6524. Effect of Lessee’s Death or Incompetence.

#### § 6525. Lease to Minor.

#### § 6526. Search Procedure on Death.

#### § 6527. Adverse Claims to Contents of Safe Deposit Box.

#### § 6528. Special Remedies for Nonpayment of Rent.

#### § 6521. Definitions.

As used in this article:

(a) “Lessee” means a person contracting with a lessor for the use of a safe deposit box.

(b) “Lessor” means a bank, trust company, or subsidiary renting safe deposit facilities, and includes a safe deposit company organized and operating under the jurisdiction of the Department solely for the purpose of leasing safe deposit facilities.

(c) “Safe deposit box” means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank’s vault.

Source: PL 3-104, § 620.

#### § 6522. Authority to Engage in Leasing Safe Deposit Facilities: Subsidiary Company.

(a) Subject to such regulations as the director may prescribe, a bank, trust company or safe deposit company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt for the deposit.

(b) A Commonwealth bank or trust company may own stock in safe deposit companies.

Source: PL 3-104, § 621.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6523. Access by Fiduciaries.

Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings pursuant to which such fiduciaries are acting, allow access thereto as follows:

(a) By any one or more of the persons acting as executors or administrators;

(b) By any one or more of the persons otherwise acting as fiduciaries when authorized in writing signed by

all other persons so acting;

(c) By any agent authorized in writing signed by all of the persons acting as fiduciaries.

Source: PL 3-104, § 622, modified.

§ 6524. Effect of Lessee's Death or Incompetence.

Where a lessor without knowledge of the death or of an adjudication of legal incompetence of the lessee, deals with his agent pursuant to a written power of attorney signed by the lessee, the transaction binds the lessee's estate and the lessee.

Source: PL 3-104, § 623.

§ 6525. Lease to Minor.

A bank may lease a safe deposit box to, and in connection therewith deal with, a minor with the same effect as if leasing to and dealing with a person of full legal capacity.

Source: PL 3-104, § 624.

§ 6526. Search Procedure on Death.

A lessor shall permit the person named in a court order for the purpose, or if no order has been served upon the lessor, the spouse, a parent, an adult descendant or a person named as an executor in a copy of a purported will produced by him, to open and examine the contents of a safe deposit box leased by a decedent or any documents delivered by a decedent for safekeeping, in the presence of an officer of the lessor; and the lessor, if so requested by such person, shall deliver:

- (1) Any writing purporting to be a will of the decedent to the court having jurisdiction of the decedent's estate according to the decedent's residence declared in the writing; and
- (2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person making the request for a search; and
- (3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein.

But no other contents shall be removed, pursuant to this section until an executor or administrator qualifies and makes claim to the contents.

Source: PL 3-104, § 625.

§ 6527. Adverse Claims to Contents of Safe Deposit Box.

(a) An adverse claim to the contents of a safe deposit box, or to property held in safekeeping, is not sufficient to require the lessor to deny access to its lessee unless:

- (1) The lessor is directed to do so by a court order issued in an action in which the lessee is served with process and named as a party by a name which identifies him with the name in which the safe deposit box is leased or the property held, or
- (2) The safe deposit box is leased or the property is held in the name of a lessee with the addition of words indicating that the contents or property is held in a fiduciary capacity, and the adverse claim is supported by a written statement of facts disclosing that it is made by or on behalf of a beneficiary and that there is a reason to know that the fiduciary will misappropriate the trust property.

(b) A claim is also an adverse claim where one of several lessees claims, contrary to the terms of the lease, an exclusive right of access, or where one or more persons claim a right of access as agents or officers of a lessee to the exclusion of others as agents or officers, or where it is claimed that a lessee is the same person as one using another name.

Source: PL 3-104, § 626.

§ 6528. Special Remedies for Nonpayment of Rent.

(a) If the rental due on a safe deposit box has not been paid for one year, the lessor may send a notice by registered mail to the last known address of the lessee stating that the safe deposit box will be opened and its contents stored at the expense of the lessee unless payment of the rental is made within 30 days. If the rental is not paid within 30 days from the mailing of the notice, the box may be opened in the presence of an officer of the lessor and of a notary public who is not a director, officer, employee, or stockholder of the lessor. The contents shall be sealed in a package by the notary public who shall write on the outside the name of the lessee and the date of the opening. The notary public shall execute a certificate reciting the name of the lessee, the date of the opening of the box, and a list of its contents. The certificate shall be included in the package and a copy of the certificate shall be sent by registered mail to the last known address of the lessee. The package shall then be placed in the general

vaults of the lessor at a rental not exceeding the rental previously charged for the box.

(b) If the contents of the safe deposit box have not been claimed within two years of the mailing of the certificate, the lessor may send a further notice to the last known address of the lessee stating that, unless the accumulated charges are paid within 30 days, the contents of the box will be sold at public auction at a specified time and place, or, in the case of securities listed on a stock exchange, will be sold upon the exchange on or after a specified date and that unsalable items will be destroyed. The time, place and manner of sale shall also be posted conspicuously on the premises of the lessor and advertised once in a newspaper of general circulation in the Commonwealth. If the articles are not claimed, they may then be sold in accordance with the notice.

The balance of the proceeds, after deducting accumulated charges, including the expense of advertising and conducting the sale, shall be deposited to the credit of the lessee in any account maintained by him, or if none, shall be deemed a deposit account with the bank or trust company operating the safe deposit facility, or in the case of a subsidiary safe deposit company, a bank or trust company owning stock therein, and shall be identified on the books of the bank as arising from the sale of contents of a safe deposit box. When any such deposit is surrendered as unclaimed deposits, the lessor shall also send to the director a copy of the certificate and an itemized statement of the amount received and the deductions. Any items remaining unsold may be destroyed.

(c) Any documents or writings of a private nature, having little or no apparent value need not be offered for sale, but shall be retained, unless claimed by the owner, for the period specified for unclaimed deposits, after which they may be destroyed.

Source: PL 3-104, § 627.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

### Article 3. Trust Business.

§ 6531. Qualification and Fiduciary Powers: Deposit of Securities.

§ 6532. Fiduciary Bond or Oath Excused.

§ 6533. Identification and Segregation of Fiduciary Assets; Investment and Deposit of Cash; Nominee for Securities.

§ 6534. Investment of Funds Held as Fiduciary.

§ 6535. Common Trust Fund.

§ 6531. Qualification and Fiduciary Powers: Deposit of Securities.

(a) It is unlawful for a bank to act as fiduciary unless it is authorized by its charter to exercise trust powers and has qualified by depositing with the director evidences of indebtedness acceptable to the director which:

- (1) Are payable to bearer or recorded in the director's name;
- (2) Constitute readily marketable legal investments for funds held by a bank as a fiduciary; and
- (3) Have a value equal to 10 percent of the minimum capital and surplus requirements set forth in 4 CMC

§ 6203.

(b) A bank shall have the right to receive the income on evidences of the indebtedness deposited with the director as long as the bank continues to conduct its business in the ordinary course.

(c) A bank which fails to maintain its deposit in conformity with this section shall, upon order of the director, resign its fiduciary positions.

(d) Upon liquidation, abandonment of trust, or resignation from all fiduciary positions, the deposit shall be made available for the ratable satisfaction of claims involving fiduciary accounts. Any surplus remaining after the satisfaction of all such claims shall be returned to the bank.

Source: PL 3-104, § 630.

§ 6532. Fiduciary Bond or Oath Excused.

No oath or bond shall be required of a bank to qualify upon appointment as a fiduciary, unless the instrument creating a fiduciary position expressly otherwise provides.

Source: PL 3-104, § 631.

§ 6533. Identification and Segregation of Fiduciary Assets; Investment and Deposit of Cash; Nominee for Securities.

(a) A bank holding any asset as a fiduciary shall:

(1) Segregate all such assets from any other assets of the bank and from the assets of other trusts, except as may be expressly provided otherwise by law or by the writing creating the trust;

(2) Record such assets in a separate set of books maintained for fiduciary activities.

(b) Cash held by a bank as fiduciary may be deposited to the credit of the bank as such fiduciary, and the funds may be invested as provided for in 4 CMC § 6534. The director may pursuant to regulation provide what investments cash held by the bank as a fiduciary may be invested in.

(c) A bank, when acting in the Commonwealth as a fiduciary or a co-fiduciary with others, or as an agent for other fiduciaries, may with the consent of its co-fiduciary or cofiduciaries, if any (who are hereby authorized to give such consent), or the fiduciaries, for whom it is acting, cause any investment held in any such capacity, to be registered and held in the name of a nominee or nominees of such bank. Such bank shall be liable for the acts of any such nominee with respect to any investment so registered. The records of the bank shall at all times show the trust for which any such investment is held and the securities shall be in the possession and control of the bank and be kept separate and apart from the assets of the bank.

Source: PL 3-104, § 632.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6534. Investment of Funds Held as Fiduciary.

A bank acting as fiduciary shall have the same investment powers as an individual fiduciary under like circumstances.

Source: PL 3-104, § 633.

#### § 6535. Common Trust Funds.

A bank or trust company may create one or more common trust funds in which individuals may participate and invest.

Source: PL 3-104, § 634.

### Article 4. Loans, Investments, and Miscellaneous.

#### § 6541. Loans.

#### § 6542. Investments.

#### § 6543. Acceptances.

#### § 6544. Diversification of Loans and Investments.

#### § 6545. Acquisition of Property to Satisfy or Protect Previous Loans.

#### § 6546. Acquisition of Banking Premises and Equipment.

#### § 6547. Sale of Assets in Ordinary Course.

#### § 6548. Borrowing.

#### § 6549. Pledge of Assets.

#### § 6550. Indorsement and Signature Guaranty.

#### § 6541. Loans.

(a) A bank may lend at a lawful rate of interest on the security of the personal obligation of the borrower.

(b) A retail bank may lend on the security of tangible and intangible personal property subject to regulations issued by the director.

(c) A retail bank may lend at a lawful rate of interest on the security of a first mortgage on improved or unimproved real estate, when:

(1) The loan is fully guaranteed or insured by the United States or an agency thereof whether the insurance is payable in cash or in obligations of the United States; or

(2) The real estate is located within the Commonwealth or any state or territory of the United States. The director may issue regulations setting requirements for real estate as collateral for loans.

(d) A bank may make the following loans which shall not be deemed loans on the security of real estate or leasehold interests therein within the meaning of this division.

(1) A loan to provide working capital to an industrial or commercial enterprise.

(2) A loan under Title 1 of the National Housing Act (12 U.S.C. § 1701 et seq.).

(3) A loan on a leasehold mortgage, payment of which is guaranteed under the National Housing Act (12 U.S.C. § 1701 et seq.) or any act of Congress.

Source: PL 3-104, § 640.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6542. Investments.

(a) In addition to other investments expressly authorized by this division, a retail bank may purchase (or discount):

- (1) Obligations which satisfy the requirements of this division for loans and are acquired in full.
- (2) Obligations of the United States, or states of the United States.
- (3) Obligations of the International Bank for Reconstruction and Redevelopment.
- (4) Obligations of a subdivision or instrumentality of a state or territory of the United States, an authority organized under state or territorial law, an interstate compact or by substantially identical legislation adopted by two or more states.
- (5) Obligations of a corporation chartered by the Commonwealth, United States or a state or territory thereof.
- (6) Obligations of a corporation chartered by the Marshall Islands, Federated States of Micronesia, or Palau; provided, the director finds that obligations of Commonwealth corporations are accorded similar borrowing rights.

(b) A retail bank may invest an amount not exceeding 10 percent of its capital in the stock of a corporation exclusively engaged in a trust brokerage and insurance company business and maintaining its offices on the premises used by the bank or another bank also owning part of its capital stock, and an amount not exceeding 33 and one-third percent of its capital in the stock and obligations of a corporation owning the premises occupied by the bank for the transaction of its business.

(c) A bank may purchase or sell without recourse any security upon the order of a customer and for his account.

(d) A bank or trust company may purchase and sell participation in:

- (1) One or more evidences of indebtedness and agreements for the payment of money; and
- (2) Pools of evidence of indebtedness and agreements for the payment of money subject to regulations by the director.

(e) A bank, subject to regulation as provided by the director, may acquire and lease personal property pursuant to a binding arrangement for the leasing of such property to a customer upon terms requiring payment to the bank, during the minimum period of the lease, or rental which in the aggregate will exceed the total expenditures by the bank for or in connection with the ownership, acquisition, maintenance and protection of the property.

(f) Obligations of the Commonwealth government or its instrumentalities.

Source: PL 3-104, § 641.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6543. Acceptances.

(a) Retail banks may accept:

(1) A draft which has not more than six months sight to run, exclusive of days of grace, and is drawn to finance the purchase of goods with maturity in accordance with the original terms of purchase, or is secured by shipping documents transferring or securing title to goods or by receipt of a licensed or bonded warehouse or elevator transferring or securing title to readily marketable, nonperishable staples.

(2) A draft which has not more than three months sight to run, exclusive of days of grace, and is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade.

(b) A retail bank may issue a letter of credit, but unless the authority conferred to draw upon the bank or its correspondents is limited to such drafts as a bank is authorized by this section to accept, the amount of the credit outstanding at any one time shall be deemed to be a loan to the person for whose account the credit was issued.

Source: PL 3-104, § 642.

§ 6544. Diversification of Loans and Investments.

The director may issue regulations on the diversification of loans and investments.

Source: PL 3-104, § 643.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6545. Acquisition of Property to Satisfy or Protect Previous Loan.

A bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the

ordinary course of business. Property acquired in satisfaction of a loan shall be held subject to the following limitations:

(a) Real Estate. A bank may hold title to real estate subject to all the restrictions of the Commonwealth Constitution regarding the ownership of real property by persons not of Northern Marianas descent.

(b) The property shall be entered on the books at cost or fair market value, whichever is less, and property which the bank is not otherwise authorized to acquire shall be charged off at a rate of not less than five percent per annum for real estate and 20 percent per annum for other property or at such lower rate not less than five percent and 10 percent respectively, as the director may allow.

Source: PL 3-104, § 644.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6546. Acquisition of Banking Premises and Equipment.

(a) A bank may acquire real estate and equipment and improve real estate to be used in the transaction of its business in the Commonwealth and may rent any space so acquired in a building in excess of its present actual need.

(b) The rate of depreciation of property so acquired shall be in accord with generally accepted accounting principles.

Source: PL 3-104, § 645.

#### § 6547. Sale of Assets in Ordinary Course.

A bank may sell any asset in the ordinary course of business, or, with the approval of the director, in any other circumstance, but the sale of all or substantially all of the assets of a bank or of a department thereof shall be governed by regulation of the director.

Source: PL 3-104, § 646.

Commission Comment: With respect to the references to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6548. Borrowing.

A bank may borrow money and issue evidence of indebtedness, subject to such regulations as the director may issue.

Source: PL 3-104, § 647.

Commission Comment: With respect to the reference to the “director” of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6549. Pledge of Assets.

A bank may pledge its assets to:

(a) Enable it to act as agent for the sale of obligations of the United States.

(b) Secure borrowed funds.

(c) Secure deposits.

Source: PL 3-104, § 648.

#### § 6550. Indorsement and Signature Guaranty.

(a) A bank may assume secondary liability as an endorser of a negotiable or nonnegotiable instrument which it owns or has received for collection or that of the guarantor of the genuineness of a signature.

(b) A guaranty of the signature means only that:

(1) The signature is not forged;

(2) The signer is the holder or has the authority to sign in the name of the holder; and

(3) The signer has legal capacity to sign.

A guaranty of the signature does not otherwise guarantee his rightfulness of the particular transfer. A bank may disclaim all or any part of the foregoing obligation in its guaranty.

Source: PL 3-104, § 649.

### CHAPTER 6. Offshore Banks.

#### § 6601. License Required.

#### § 6602. Requirements for Issuance of License.

§ 6603. Duty to Report Transfer.

§ 6604. Reporting Requirements: Preservation of Confidences.

§ 6605. Prohibited Act.

§ 6606. Accounts to be Kept.

§ 6601. License Required.

(a) Before any person may operate an offshore bank in the Commonwealth, a written license issued by the director shall be obtained, except as specifically exempted by subsection (b) of this section. Knowing and willful violation of this section is punishable by a civil fine not exceeding \$50,000 or imprisonment for a period not exceeding one year, or both.

(b) Every bank which has an offshore banking license on February 6, 1984, is exempt from the requirements of this section, but upon the expiration of its offshore banking license or for a period of one year from February 6, 1984, whichever is first, the bank shall pay the fee then imposed for renewal of an offshore banking license, at which time it shall be issued an offshore banking license; provided, that it has then complied with all other requirements of 4 CMC § 6602. Offshore banks shall be exempt from any other bank licensing provisions of this division.

Source: PL 3-104, § 800.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6602. Requirements for Issuance of License.

The director shall promptly issue an offshore banking license when the applicant has met the following requirements:

(a) It is duly incorporated under the laws of the Commonwealth and has filed with the director a certified copy of its articles and bylaws.

(b) It has submitted an application for an offshore banking license including proof of its paid-in capital, stock ownership, and management in such form as the director may require.

(c) It has complied with all applicable requirements of the Commonwealth relating to domestic corporations.

(d) It has paid the license fee for an offshore bank of \$5,000 for its first year of operation and thereafter an additional \$5,000 for each successive year of operation; provided, that the maximum license fee shall be \$25,000. The term of an offshore bank license shall be for one calendar year.

(e) It has provided the names, addresses, and such other information regarding holders of five percent or more of an offshore bank's stock as the director may reasonably require. In complying with this requirement, a review of the financial and criminal background of substantial stockholders for a period of seven years prior to the application by a reputable agency engaged in the business of investigation shall be sufficient.

(f) It has at all times not less than the following capital structure:

(1) Capital consisting of common stock as follows; paid-in-cash of not less than \$500,000,

(2) Paid-in surplus amounting to not less than \$200,000.

(g) Its manager or agent residing in the Commonwealth has taken an oath that the manager or agent will diligently and honestly administer the affairs of the corporation and will not knowingly or willfully violate or permit to be violated any of the provisions of law applicable to the corporation. The oath shall be subscribed by the manager or agent taking it and shall be transmitted to the director and filed in the director's office.

Source: PL 3-104, § 801.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

§ 6603. Duty to Report Transfer.

Upon any transfer of stock in an offshore bank which results in the ownership of more than 10 percent of the stock by a person for whom a report pursuant to 4 CMC § 6602(e) has not been done within the calendar year preceding the transfer, the offshore bank shall provide a report pursuant to the requirements of 4 CMC § 6602(e) within 30 days of the transfer. Failure to comply with this section is grounds for suspension of an offshore banking license.

Source: PL 3-104, § 802.

§ 6604. Reporting Requirements: Preservation of Confidences.

(a) Each offshore bank shall submit to the director a report of its condition as of January 1 and June 1 of each year. The reports shall contain the names and addresses of the bank's beneficial shareholders and such other information as the director may reasonably require to ascertain whether or not the offshore bank is being operated in accordance with this division. The reports shall be personally signed by the resident agent of the offshore bank.

(b) No information provided in compliance with this division or obtained by the director in the performance of the director's duties shall be furnished by the director to any third party, except upon request of federal or local law enforcement or tax collection agencies, court order, subpoena, other judicial process, or the express written consent of the persons involved. The names of the beneficial shareholders of an offshore bank shall be public information.

(c) The records of an offshore bank and its individual customers shall be confidential. An offshore bank shall not furnish to third parties records of any transaction between it and any of its borrowers, lenders or other customers except upon court order, subpoena, other judicial process, or the express written consent of all parties involved in the transaction. No process shall require disclosure sooner than 15 days from the date of service of such process upon the offshore bank.

(d) This section shall not preclude the exchange of information between lenders and offshore banks in the normal course of the credit business.

(e) Every person who knowingly and willfully violates the provisions of this section may be found guilty of a misdemeanor punishable by a fine not exceeding \$2,000, or imprisonment for a period not exceeding one year, or both.

Source: PL 3-104, § 803.

Commission Comment: With respect to the references to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6605. Prohibited Act.

An offshore bank shall not make loans, accept deposits, or borrow funds in any form from a resident of the Commonwealth.

Source: PL 3-104, § 804.

#### § 6606. Accounts to be Kept.

An offshore bank shall record in the Commonwealth, for accounting purposes, all its loans, borrowings and business transactions, in the English language.

Source: PL 3-104, § 805.

### CHAPTER 7. Liability of Officers, Directors, Employees, and Agents.

#### § 6701. Liability of Officers, Directors, Employees, and Agents.

#### § 6702. Limitation of Personal Liability.

#### § 6701. Liability of Officers, Directors, Employees, and Agents.

An officer, director, employee, agent, or attorney of a bank is responsible for an act or omission of the institution declared to be a criminal offense under this division whenever he or she knowingly and wilfully participates in authorizing, executing, ratifying, or concealing such act, or in authorizing or ratifying such omission or, having a duty and realizing the duty exists to take the required action, omits to do so. A director shall be presumed to participate in any action of which the director has knowledge taken or omitted to be taken by the board of which he or she is a member, unless the director dissents from it in writing and promptly notifies the board of the dissent. Every person by applying or operating a bank under this division consents to the jurisdiction of the Commonwealth Trial Court for purposes of this section.

Source: PL 3-104, § 900.

Commission Comment: Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."

#### § 6702. Limitation of Personal Liability.

The director and other employees of the department shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his or her office.

Source: PL 3-104, § 901.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

CHAPTER 8. Prohibited Practices, Sanctions.

§ 6801. Unauthorized Conduct of Banking Business.

§ 6802. Unauthorized Assumption of Liability.

§ 6803. Unlawful Service as Officer or Director.

§ 6804. Unlawful Gratuity or Compensation; Transactions of Persons Connected With Commonwealth Bank.

§ 6805. Unlawful Concealment of Transactions.

§ 6806. Improper Maintenance of Accounts; False or Deceptive Entries and Statements.

§ 6807. Unlawful Payment of Penalties and Judgments Against Others, Including Directors and Officers.

§ 6808. Unlawful Use of Words "Safe Deposit."

§ 6809. Unlawful Operation of Bank.

§ 6810. Unlawful Solicitation or Negotiation for Offshore Bank Loans.

§ 6811. Unauthorized Disclosure of Information.

§ 6812. Prohibited Offshore Act.

§ 6813. Criminal Sanctions, Violations of Rules and Orders.

§ 6814. Injunction.

§ 6801. Unauthorized Conduct of Banking Business.

It is unlawful for any unauthorized person to engage in the business of receiving deposits, discounting evidences of indebtedness, or receiving money for transmission, to represent that he is or is acting for a bank or to use an artificial or corporate name which purports to be or suggests that it is the name of a bank.

Source: PL 3-104, § 1000.

§ 6802. Unauthorized Assumption of Liability.

Except as expressly permitted in this division, a Commonwealth bank shall not assume liability as an insurer or as a guarantor or indorser of any security instrument or obligation in which or with respect to which it has not property interest.

Source: PL 3-104, § 1001.

§ 6803. Unlawful Service as Officer or Director.

It is unlawful for any person to serve as an officer or director of a bank who:

(a) Is an officer, director or employee of a directly competitive bank.

(b) Has been convicted of an offense constituting in the jurisdiction in which the judgment was rendered a violation of the banking laws, a felony having as one of its necessary elements a fraudulent act or an act of dishonesty in the solicitation of, acceptance, custody, or payment of money or property or a breach of trust.

(c) Is indebted to the bank for more than 30 days upon a judgment that has become final.

(d) Has an interest adverse to the bank unless such interest is promptly and fully disclosed in writing to its board of directors or trustees.

Source: PL 3-104, § 1002.

§ 6804. Unlawful Gratuity or Compensation; Transactions of Persons Connected With Commonwealth Bank.

(a) It is unlawful for an affiliate of a bank or for an officer, director or employee of a bank or affiliate of a bank:

(1) To solicit, accept or agree to accept, directly or indirectly, from any person other than the institution any gratuity, compensation or other personal benefit for any action taken by the institution or for endeavoring to procure any such action.

(2) To have any interest, directly or indirectly, in the proceeds of a loan or of a purchase or sale made by the bank, unless the loan, purchase or sale is expressly authorized by this division or by rule of the board and is approved in advance by vote of two-thirds of all the directors of the bank, any interested director or trustee taking no part in such vote.

(3) To have any interest, direct or indirect, in the purchase at less than its face value of any evidence of indebtedness issued by the institution.

(4) To discount or make any loan, directly or indirectly, upon any note or other evidence of indebtedness known to have been offered to the institution for discount or as security for a loan and to have been refused by it.

(b) In this section the term "affiliate" shall include:

(1) Any person who holds a majority of the stock of a bank or has been determined by the board to hold a

controlling interest therein, any other corporation in which the person owns a majority of the stock and any partnership in which the person has an interest.

(2) Any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock and any partnership in which the person has an interest.

(3) Any corporation of which a majority of the directors are officers, directors or employees of the institution or of which officers, directors, trustees or employees constitute a majority of the directors of the institution.

Source: PL 3-104, § 1003.

#### § 6805. Unlawful Concealment of Transactions.

It is unlawful for an officer, director, employee, attorney or agent of a bank to conceal or endeavor to conceal any transaction of the bank from any officer, director or employee of the bank or any official or employee of the department to whom it should properly be disclosed.

Source: PL 3-104, § 1004.

#### § 6806. Improper Maintenance of Accounts; False or Deceptive Entries and Statements.

It is unlawful for an officer, director, employee, or agent of a bank:

(a) To maintain or authorize the maintenance of any account of the bank in a manner which, to his or her knowledge, does not conform to the requirements prescribed by this division or by the director.

(b) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be made in any book, account, report or statement of the institution.

(c) To obstruct or endeavor to obstruct a lawful examination of the institution by an officer or employee of the department.

Source: PL 3-104, § 1005.

#### § 6807. Unlawful Payment of Penalties and Judgments Against Others, Including Directors and Officers.

It is unlawful for a Commonwealth bank to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty, or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien, or as provided in this division.

Source: PL 3-104, § 1006.

#### § 6808. Unlawful Use of Words "Safe Deposit."

It is unlawful for any person to use the words "safe deposit," "safety deposit," or other words deceptively similar thereto, in connection with the rental of storage space, or in the title or name under which business was done, except:

(a) A person subject to the jurisdiction of the department; or

(b) A manufacturer or dealer in safe deposit facilities or equipment; or

(c) An association, the membership of which is composed of officers or institutions subject to the jurisdiction of the Department of Commerce and Labor or of the banking department of other territories or states.

Source: PL 3-104, § 1007.

Commission Comment: With respect to the references to the "Department of Commerce and Labor," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6809. Unlawful Operation of Bank.

It is unlawful for any person to operate a bank without a valid license.

Source: PL 3-104, § 1008.

#### § 6810. Unlawful Solicitation or Negotiation for Offshore Bank Loans.

It is unlawful for any person who is an officer, employee or agent in the Commonwealth of any offshore bank to actively solicit or negotiate with any person for a loan with that offshore bank.

Source: PL 3-104, § 1009.

#### § 6811. Unauthorized Disclosure of Information.

(a) Except for the purpose of the performance of his or her duties, compliance with any public law, or when lawfully required to do so by any court of competent jurisdiction, no government employee or other person shall disclose any information relating to the affairs of a bank or of any customer of a bank which he or she has

acquired in the performance of duties or the exercise of his or her functions unless the bank or customer consents in writing to the disclosure.

(b) Every person who knowingly and wilfully violates the provisions of this section may be found guilty of a misdemeanor punishable by imprisonment not exceeding one year or by a fine not exceeding \$5,000, or both.

Source: PL 3-104, § 1010.

#### § 6812. Prohibited Offshore Acts.

An offshore bank may not make loans, accept deposits or borrow funds in any form from a resident of the Commonwealth or a corporation chartered by the Commonwealth.

Source: PL 3-104, § 1011.

#### § 6813. Criminal Sanctions, Violations of Rules and Orders.

(a) Any corporate entity responsible for an act or omission of a duty imposed by this division may be found guilty:

(1) Of a misdemeanor punishable by a fine not exceeding \$50,000.

(2) If the act or omission was intended to defraud, of a felony punishable by fine not exceeding \$100,000.

(b) Knowing and willful violation of this division by an individual shall be a misdemeanor if the amount involved is less than \$1,000. Knowing and willful violations where the sum involved exceeds \$1,000 shall be a felony. An individual convicted of a misdemeanor under this division shall be imprisoned for not more than six months, or fined not more than \$1,000, or both. An individual convicted of a felony under this division shall be imprisoned for not more than two years or fined not more than \$25,000 or both. Any prohibited act or offense against this law not otherwise specified is a misdemeanor.

(c) An officer, director, employee, agent or attorney of a bank shall be responsible for an act or omission of the institution declared in this division to be unlawful whenever, knowing that such act or omission is unlawful, he or she participates in authorizing, executing, ratifying or concealing the act, or in authorizing or ratifying an omission or, having a duty to take the required action, omits to do so.

A director shall be deemed to participate in any action of which the director has knowledge taken or omitted to be taken by the board of which he or she is a member unless the director dissents therefrom in writing and promptly notifies the Director of Commerce and Labor of his or her dissent.

(d) It is unlawful to violate any lawful order of the director, served upon the corporate entity or to knowingly violate any lawful rule, regulation, or order of the director.

(e) Unless otherwise provided in this division, it is no defense to a criminal prosecution hereunder that the defendant did not know the facts establishing the criminal character of the act or omission charged if he or she could and should have known the facts in the proper performance of his or her duty.

Source: PL 3-104, § 1012.

Commission Comment: With respect to the references to the "Director of Commerce and Labor," see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

#### § 6814. Injunction.

Whenever a violation of this division by a bank or an officer, director or employee thereof is threatened or impending and will cause substantial injury to the institution or to the depositors, creditors, or stockholders thereof, the Commonwealth Trial Court shall, upon suit instituted by the director through the Attorney General, issue an injunction restraining the violation.<sup>32</sup>

Source: PL 3-104, § 1013.

Commission Comment: With respect to the reference to the "director" of the Department of Commerce and Labor, see Executive Order 94-3 (effective August 23, 1994), reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001.

Section 4 of PL 6-25, the "Commonwealth Judicial Reorganization Act of 1989," provides that "[w]herever the term 'Commonwealth Trial Court' appears in the Commonwealth Code, it is henceforth to be interpreted and understood to refer to the Commonwealth Superior Court."