

Effective 5/13/2014

7-2-1 Supervisory actions by commissioner -- Grounds -- Mergers or acquisitions authorized by commissioner -- Possession of business and property taken by commissioner.

- (1) An institution under the jurisdiction of the department is subject to supervisory actions by the commissioner under this chapter or Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, if the commissioner, with or without an administrative hearing, finds that:
 - (a) the institution is not in a safe and sound condition to transact its business;
 - (b) an officer of the institution or other person has refused to be examined or has made false statements under oath regarding its affairs;
 - (c) the institution or other person has violated its articles of incorporation or any law, rule, or regulation governing the institution or other person;
 - (d) the institution or other person is conducting its business in an unauthorized or unsafe manner, or is practicing deception upon its depositors, members, or the public, or is engaging in conduct injurious to its depositors, members, or the public;
 - (e) the institution or other person has been notified by its primary account insurer of the insurer's intention to initiate proceedings to terminate insurance;
 - (f) the institution or other person has failed to maintain a minimum amount of capital as required by the department, any state, or the relevant federal regulatory agency;
 - (g) the institution or other person is a depository institution that has failed or refused to pay its depositors in accordance with the terms under which the deposits were received, or has or is about to become insolvent;
 - (h) the institution or other person or its officers or directors have failed or refused to comply with the terms of a legally authorized order issued by the commissioner or by any federal authority or authority of another state having jurisdiction over the institution or other person;
 - (i) the institution or other person or its officers or directors have failed or refused, upon proper demand, to submit its records, books, papers, and affairs for inspection to the commissioner or to a supervisor or an examiner of the department;
 - (j) the institution or other person or its officers or directors, after 30 days written notice, have failed to comply with or have continued to violate this title or any rule or regulation of the department issued under it;
 - (k) any person who controls the institution or other person subject to the jurisdiction of the department has used the control to cause the institution or other person to be or about to be in an unsafe or unsound condition, to conduct its business in an unauthorized or unsafe manner, or to violate this title or any rule or regulation of the department issued under it; or
 - (l) the remedies provided in Section 7-1-307, 7-1-308, or 7-1-313 are ineffective or impracticable to protect the interest of depositors, creditors, or members of the institution or other person, or to protect the interests of the public.
- (2) The commissioner may take any action described in Subsection (3) if:
 - (a) he finds that:
 - (i) any of the conditions set forth in Subsection (1) exist with respect to an institution under the jurisdiction of the department; and
 - (ii) an order issued pursuant to Section 7-1-307, 7-1-308, or 7-1-313 would not adequately protect the interests of the institution's depositors, creditors, members, or other interested persons from all dangers presented by the conditions found to exist; or
 - (b) two-thirds of the voting shares of an institution under the jurisdiction of the department that are eligible to be voted at any regular or special meeting of the shareholders of the institution

are voted at the meeting in favor of a resolution consenting to the commissioner taking or causing to be taken any of the actions described below.

- (3) After making the requisite findings or receiving the consenting vote of shareholders under Subsection (2), the commissioner may:
 - (a) without taking possession of the institution, authorize, or by order require or give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of the institution or other person by any other institution or entity approved or designated by the commissioner in accordance with Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; or
 - (b) take possession of the institution or other person subject to the jurisdiction of the department with or without a court order if an acquisition of control of, a merger with, an acquisition of all or a portion of the assets of, or an assumption of all or a portion of the liabilities of the institution or other person without taking possession does not appear to the commissioner to be practicable.
- (4) Upon taking possession of an institution or the person, the commissioner is vested by operation of law with the title to and the right to possession of all assets, the business, and property of the institution or other person subject to court order made under Section 7-2-3. While in possession of an institution or other person, the commissioner or any receiver or liquidator appointed by him may exercise any or all of the rights, powers, and authorities granted to the commissioner under this chapter, or may give effect to the acquisition of control of, the merger with, the acquisition of all or a portion of the assets of, or the assumption of all or a portion of the liabilities of an institution or other person subject to the jurisdiction of the department, under the provisions of Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.
- (5) An action of the commissioner under this section may only be enjoined or set aside upon a finding, after notice and hearing, that the action is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.

Amended by Chapter 189, 2014 General Session