

Act No. 34
Public Acts of 1992
Approved by the Governor
April 20, 1992
Filed with the Secretary of State
April 21, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Randall, Middaugh, Bankes, Muxlow, Stopczynski, Griffin, Owen and Bennett

ENROLLED HOUSE BILL No. 5491

AN ACT to amend the title and section 185 of Act No. 319 of the Public Acts of 1969, entitled as amended "An act to revise and codify the laws relating to banks, industrial banks, foreign banks, trust companies and safe and collateral deposit companies; to provide for their incorporation, regulation, and supervision; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," being section 487.485 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. The title and section 185 of Act No. 319 of the Public Acts of 1969, being section 487.485 of the Michigan Compiled Laws, are amended to read as follows:

TITLE

An act to revise and codify the laws relating to banks, industrial banks, foreign banks, trust companies, and safe and collateral deposit companies; to provide for their incorporation, regulation, and supervision; to authorize the granting of trust powers to banks and to regulate the exercise of those powers; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts.

Sec. 185. (1) Funds or property held by a bank as fiduciary and available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or defining the trust or other capacity in which the bank is acting or, where the bank holds the funds or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, funds or property held by a bank as fiduciary shall within a reasonable time be invested in real or personal property, of whatever type or nature, as an ordinarily prudent person of intelligence and integrity who is a trustee of the money of others would purchase, in the exercise of reasonable care, judgment, and diligence under the conditions existing at the time of purchase, having due regard, in the case of a purchase of securities, for the management, reputation, and stability of the issuer and the character of the particular securities.

(2) Except as otherwise permitted by law, a court order, or the agreement, instrument, or order creating or defining the trust, or other capacity in which the bank is acting or with the consent of all interested parties or their representatives, or where the bank holds the funds or property as agent, as directed or permitted by the bank's principal, funds or property held by a bank as fiduciary shall not be invested in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank.

(3) Notwithstanding any other statutory or common law, except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment, a bank, or a bank and 1 or more cofiduciaries, may invest in a registered investment company any funds or property with respect to which the bank, or the bank and 1 or more cofiduciaries, exercises investment discretion, even though either or both of the following apply:

(a) The bank or an affiliate of the bank provides services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receives reasonable remuneration for those services.

(b) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of its directors or trustees.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789.

(5) For purposes of this section, a bank is considered to be holding funds or property in a fiduciary capacity if it is holding the assets as trustee, personal representative, custodian, conservator, guardian, agent, or in any other fiduciary capacity.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.