

Act No. 12
Public Acts of 1991
Approved by the Governor
April 25, 1991
Filed with the Secretary of State
April 25, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Senators Cruce, Wartner and DeGrow

ENROLLED SENATE BILL No. 137

AN ACT to amend sections 30, 151, 152, 197, 231, and 235 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," section 30 as amended by Act No. 200 of the Public Acts of 1988, sections 151 and 152 as amended by Act No. 311 of the Public Acts of 1988, and sections 197 and 231 as amended by Act No. 177 of the Public Acts of 1985, being sections 487.330, 487.451, 487.452, 487.497, 487.531, and 487.535 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 30, 151, 152, 197, 231, and 235 of Act No. 319 of the Public Acts of 1969, section 30 as amended by Act No. 200 of the Public Acts of 1988, sections 151 and 152 as amended by Act No. 311 of the Public Acts of 1988, and sections 197 and 231 as amended by Act No. 177 of the Public Acts of 1985, being sections 487.330, 487.451, 487.452, 487.497, 487.531, and 487.535 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 30. (1) Except with respect to rules promulgated under section 19, a cease and desist order made under sections 35 to 46, and an order made on an application seeking approval of the commissioner under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(31), 151h(3), 157, 171, 172, or 173, an institution or an interested party who is dissatisfied with an order, ruling, or finding issued by the commissioner may request a reconsideration of the order, ruling, or finding within 10 days after the issuance of the order, ruling, or finding. Within 30 days after the receipt of a written request for reconsideration, the commissioner shall set the matter down for a formal hearing unless a formal hearing has been held before the issuance of the order, ruling, or finding. The commissioner may conduct a formal hearing before the issuance of an order, ruling, or finding.

(2) A hearing held under subsection (1) shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The commissioner shall require an entity making an application under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(31), 151h(3), 157, 171, 172, or 173 to give notice of the application by publication. The applicant, within 10 days after the filing of an application, shall cause notice to be published in a newspaper or newspapers of general circulation in the community or communities in which the bank, branch, state agency, or additional office of a state agency, is to be located and, if required by rule of the commissioner, in which the

bank, banks, bank holding company, or state agency involved in the subject application are located. Publication shall be 1 time per week for 2 consecutive weeks in the form prescribed by the commissioner. Proof of publication shall be filed with the commissioner within 10 days after the date of the second publication of notice.

(4) An institution or other interested party who desires to protest the application shall file a written notice of protest with the commissioner and with the applicant within 10 days after the date of the second publication of notice. Within 30 days after the date of the second publication of notice, an institution or other interested party who has filed a written notice of protest shall file with the commissioner and with the applicant, a written statement setting forth all of the following:

(a) A list of specific items in the application which are the basis for the protest and an explanation of the reasons for the protest.

(b) A statement of the facts supporting the reasons for the protest including economic and financial data.

(c) A request for oral argument if desired.

(5) The applicant, within 40 days after the date of the second publication of notice, may file with the commissioner and with the parties which have filed written notice of protest, written material in response to the written statement and may request oral argument before the commissioner if oral argument has not been requested by an institution or other interested party who has filed a written notice of protest.

(6) Oral argument may be held in the commissioner's discretion if neither the applicant nor an interested party requests oral argument.

(7) An oral argument, if scheduled as provided in this section, shall be held within 55 days after the date of the second publication of notice.

(8) Only the applicant and those interested parties who have filed written statements under subsection (4) may participate in the oral argument. Oral argument may be made by each party or by an authorized representative. Oral argument shall be limited to issues raised in the materials submitted in connection with the application and the protest. One hour shall be permitted to each participant other than the applicant for oral argument. The applicant shall have as much time as all other participants have been permitted. The commissioner shall cause a stenographic record of the oral argument to be made, with costs to be allocated equally among the parties requesting oral argument unless otherwise provided by rule of the commissioner.

(9) The commissioner shall issue an order within 100 days after the filing of the application. If an application is denied, or if a protested application is approved, the commissioner shall provide a detailed written explanation of the basis of the commissioner's decision. Appeal of an order shall not be made by a party without first requesting a reconsideration of the order under subsection (10).

(10) The applicant or an interested party who filed written statements under subsection (4) and who participated in the oral argument, if held, who is dissatisfied with an order of the commissioner, within 5 days after the issuance of the order, may file with the commissioner a written request for reconsideration of the order stating the reasons for the request. The commissioner, within 10 days, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant and all interested parties 10 days to file written arguments or briefs. The commissioner may conduct an oral argument after granting a petition for reconsideration. The argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order within 20 days after granting the petition for reconsideration.

(11) The commissioner may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to provide the application procedure. The rules shall be consistent with this section.

Sec. 151. Subject to the limitations and restrictions contained in this act or in a bank's articles, the bank may engage in the business of banking and a business related or incidental to banking, and for that purpose, without specific mention thereof in its articles, a bank has the powers conferred by this act and the following additional corporate powers:

(1) To have a corporate seal, which may be altered at pleasure, and to use the corporate seal by causing it, or a facsimile of it, to be impressed, affixed, or reproduced in any manner.

(2) To have succession in perpetuity or for a limited period of time, as fixed by its articles or until its affairs are finally wound up by liquidation, forfeiture, or dissolution, as provided in this act.

(3) To make contracts.

(4) To sue and be sued, complain, and defend in its corporate name as fully as a natural person.

(5) To elect or appoint directors who shall appoint from their members a president who shall perform duties as may be designated by the board, and who shall serve as the chairperson of the board, unless the board

designates another director to be chairperson in lieu of the president. The board shall appoint 1 or more vice-presidents, a cashier, and other officers as the board considers necessary, who may or may not be members of the board, shall define their duties, shall dismiss the officers or any of them at pleasure, and shall appoint other officers to fill their places.

(6) To make, alter, amend, and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(7) To have and exercise the powers and means appropriate to effect the purpose for which the bank is incorporated.

(8) To make contributions and donations for the public welfare or for religious, charitable, scientific, or educational purposes, and, in connection therewith, to establish and operate charitable trusts.

(9) To purchase, take, lease as lessee, or otherwise acquire, and to own, hold, and use, to sell, lease as lessor, mortgage, pledge, grant a security interest in, convey, or otherwise dispose of real or personal property in connection with the exercise of a power granted in this act.

(10) To act as agent of the United States, or of an instrumentality or agency of the United States, for the sale or issue of bonds, notes, or other obligations of the United States, or an instrumentality or agency of the United States, and, in connection therewith, to take other action as, in the opinion of the board of directors, may be necessary or proper to enable the bank to so act.

(11) To become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of its membership, and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act.

(12) To become an insured bank pursuant to the federal deposit insurance act, and to take actions incident to the maintenance of an insured status under that act.

(13) To become a member of the federal home loan bank as defined in section 2 of the federal home loan bank act, chapter 522, 47 Stat. 725, and to exercise those powers conferred upon a federal home loan bank member by the federal home loan bank that are consistent with this act.

(14) To purchase the shares of stock of a small business investment company doing business in this state and licensed under, or established pursuant to, the federal small business investment act of 1958, Public Law 85-699, 72 Stat. 689, and to purchase shares of stock of a business and industrial development corporation established pursuant to the provisions of the Michigan BIDCO act, Act No. 89 of the Public Acts of 1986, being sections 487.1101 to 487.2001 of the Michigan Compiled Laws.

(15) To sell mortgage loans to the federal national mortgage association, or a successor of the association, and, in connection with the association, to make payments of capital contributions, required pursuant to law, in the nature of subscriptions for stock of the association or a successor of the association, to receive stock evidencing the capital contributions, and to hold or dispose of the stock.

(16) To conduct its business through subsidiaries, but a bank shall not acquire or hold for its own account shares of a bank or bank holding company, unless the shares are acquired as provided in subdivision (19). The commissioner may promulgate rules as he or she considers necessary to effectuate this subdivision and prevent evasions of this subdivision. For the purpose of this subdivision, subsidiary means a corporation of which at least 80% of the voting stock of the corporation is owned by state and national banks located in Michigan.

(17) To make application for and to obtain insurance of loans, but not to operate an insurance underwriting business.

(18) To give its bond in a proceeding in any court in which it is a party or upon an appeal in a proceeding, and to pledge assets as security for the bond.

(19) To acquire and hold, irrespective of any restriction or limitation of this act, property, or a security interest in property, as protection against loss on an evidence of indebtedness, on an agreement for the payment of money, or on an investment security previously acquired lawfully and in good faith, subject to both of the following:

(a) A determination by a majority vote of its directors, at least once each year, as to the advisability of retaining the property or security interest so acquired.

(b) Disposition within a period of 60 months after the date of acquisition, or a longer period as the commissioner may approve.

(20) To hold property lawfully held on August 20, 1969, subject to the inclusion of the property in any computation of a limitation on the acquisition for holding of property of a like character under this act.

(21) To service loans for others and to receive a fee for the service.

(22) To purchase capital stock, bonds, debentures, or other obligations of a corporation created pursuant to the authority granted by sections 161 to 165, but subject to the limitations and conditions of those sections.

(23) To execute and deliver guarantees as may be incidental or usual in carrying on the business of a bank.

(24) To purchase, hold, and dispose of stock of the student loan marketing association established pursuant to section 439 of part B of title IV of the higher education act of 1965, Public Law 89-329, 20 U.S.C. 1807-2.

(25) To purchase open accounts, with or without recourse against the seller of an open account, which accounts need not represent an evidence of indebtedness, and including open accounts in connection with export transactions, when the accounts are protected by insurance such as that provided by the foreign credit insurance association and the export-import bank.

(26) To purchase for its own account shares of stock issued by an agricultural credit corporation or a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening or marketing of livestock. However, unless a bank owns at least 80% of the stock of the corporation, the amount invested by the bank at any 1 time in the stock of the corporation shall not exceed 20% of the unimpaired capital and surplus of the bank.

(27) To make, arrange, participate in, purchase, or sell loans or extensions of credit secured by liens or interests in real estate or leaseholds.

(28) To purchase and hold for its own account any class of voting securities of a bank organized and chartered pursuant to section 54 or the national bank act, chapter 106, 13 Stat. 99, and engaged exclusively in providing services to depository institutions or their officers, directors, and employees, or a bank holding company which owns or controls a bank organized and chartered pursuant to section 54 or the national bank act, chapter 106, 13 Stat. 99, if the stock of a bank holding company is owned exclusively, except to the extent directors' qualifying shares are required by law, by depository institutions, as defined in section 54, and if all subsidiaries of the company engage exclusively in serving depository institutions or their officers, directors, and employees. The amount of securities of a bank or bank holding company held by an investing bank shall not exceed 20% of the capital and surplus of the investing bank.

(29) To purchase, hold, and dispose of mortgages, obligations, or other securities which are or ever have been sold by the federal home loan mortgage corporation pursuant to sections 305 and 306 of title III of Public Law 91-351, 12 U.S.C. 1454 and 1455.

(30) To incur liabilities, borrow money, and issue its notes, bonds, and other obligations.

(31) To exercise all incidental powers as shall be necessary to carry on the business of banking. In order to implement the provisions of this subdivision, the commissioner may promulgate rules pursuant to section 19; or issue declaratory rulings in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws; or issue orders on applications by 1 or more banks to exercise powers not specifically authorized by this act. It is intended that this subdivision shall vest in the commissioner the discretion and authority to authorize banks to exercise the powers appropriate and necessary to compete with other depository financial institutions and other providers of financial services. In the exercise of the discretion permitted by this subdivision the commissioner shall consider the ability of banks to exercise any additional power in a safe and sound manner, the authority of national banks operating pursuant to federal law or regulation, the powers of other competing entities providing financial services in the banks' service area, and any specific limitations on bank powers contained in this act or in any other state law. On a quarterly basis, the commissioner shall give notice to all banks of rules promulgated or declaratory rulings or determinations issued pursuant to this subdivision.

Sec. 152. The powers granted in sections 151 and 151a shall not be construed as limiting or enlarging any grant of authority made elsewhere by this act except as provided in section 151(19). Except as otherwise provided in this act or in the articles or in the bylaws, such powers shall be exercised by the board of directors of the bank.

Sec. 197. The following loans and extensions of credit shall not be subject under sections 196 to 198 to a limitation based upon the capital and surplus:

(a) A loan or extension of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse.

(b) The purchase of banker's acceptances of another bank of the kind described in paragraph 7 of section 13 of the federal reserve act, chapter 6, 38 Stat. 251.

(c) A loan or extension of credit to a financial institution or to a receiver, conservator, or any other agent or supervising authority in charge of the business and property of the financial institution, when the loan or extension of credit is approved by the commissioner.

(d) A loan or extension of credit to a customer, secured or covered by guarantees or by commitments or agreements to take over or to purchase the loan or extension of credit, made by a federal reserve bank or by the United States, or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned directly or indirectly by the United States.

(e) A loan or extension of credit from 1 business day to the next to a state bank or national banking association of excess reserve balances from time to time maintained under section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

(f) A loan or extension of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other obligations fully guaranteed as to principal and interest by the United States.

(g) A loan or extension of credit secured by a loan agreement between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligation secured by the loan agreement.

(h) A loan or extension of credit arising from securities purchased under an agreement to resell.

(i) A loan or extension of credit to the student loan marketing association.

(j) A loan or extension of credit fully secured by a segregated deposit account in the lending bank.

(k) A loan or extension of credit arising from the acceptance by a bank of drafts or bills of exchange drawn upon the bank, or a bank's participation in drafts or bills of exchange drawn upon and accepted by another bank, in conformity with section 195.

Sec. 231. (1) Except as otherwise provided in this section, a bank or bank officer shall not give preference to a depositor or creditor by pledging the assets of the bank as collateral security or otherwise.

(2) A bank, with the written consent of the commissioner, may pledge its assets in an amount not in excess of 10% of its total deposits for the purpose of securing the following:

(a) Funds belonging to the United States or belonging to or being administered by an officer, instrumentality, or agent of the United States, funds of estates being administered by a federal court under a federal bankruptcy law, and other funds when required or permitted to do so under the laws of the United States or an order of a federal court.

(b) Surplus funds of the state held by the state treasurer.

(c) Funds of the Mackinac bridge authority, which is declared to be a political subdivision of this state, under Act No. 21 of the Public Acts of the Extra Session of 1950, being sections 254.301 to 254.304 of the Michigan Compiled Laws.

(d) Funds of the international bridge authority, which is declared to be a political subdivision of this state, under Act No. 99 of the Public Acts of 1954, as amended, being sections 254.221 to 254.240 of the Michigan Compiled Laws.

(e) Funds on deposit under Act No. 205 of the Public Acts of 1941, as amended, being sections 252.51 to 252.64 of the Michigan Compiled Laws, providing for limited access highways.

(f) Funds on deposit to the credit of the Michigan employment security commission.

(g) Funds of the Michigan state housing development authority constituting proceeds of the sale of the authority's notes and bonds and repayments of those notes and bonds, under the state housing development authority act of 1966, Act No. 346 of the Public Acts of 1966, as amended, being sections 125.1401 to 125.1499c of the Michigan Compiled Laws.

(3) A bank shall not pledge its assets for the purpose of securing funds belonging to any other political subdivision of this state.

(4) The requirements, restrictions, and limitations imposed by this section shall not apply to the pledging of an obligation of the United States, direct or fully guaranteed, or both, for the purpose of securing a deposit of the United States when the deposit is established coincidentally with the purchase of an obligation of the United States by or through an institution.

(5) A bank may pledge its assets to secure liabilities of the following types:

(a) In the case of member banks, liabilities incurred under the federal reserve act, chapter 6, 38 Stat. 251. In the case of nonmember banks, liabilities incurred through borrowing under the same conditions as are imposed upon members of the federal reserve system by the federal reserve act, chapter 6, 38 Stat. 251.

(b) In the case of federal home loan bank members, liabilities incurred under the federal home loan bank act, chapter 522, 47 Stat. 725.

(c) Liabilities incurred under former section 202 of title II of the federal farm loan act, chapter 245, 39 Stat. 360.

(d) Liabilities incurred on account of a loan made with the express approval of the commissioner under section 197(c).

(e) Liabilities incurred on account of borrowings from 1 business day to the next from a bank or national

banking association of excess reserve balances from time to time maintained by the bank or national banking association under section 207, or section 19 of the federal reserve act, chapter 6, 38 Stat. 251.

(f) Liabilities incurred on account of securities sold under a repurchase agreement.

Sec. 235. Except where required or permitted under the federal reserve act, chapter 6, 38 Stat. 251, or the federal home loan bank act, chapter 522, 47 Stat. 725, a bank shall not deposit an amount in excess of 10% of its capital and surplus with any other bank or national banking association but any bank may deposit an amount not to exceed 15% of its capital, surplus and deposits in any legal depository in a reserve city designated by the commissioner pursuant to the provisions of this act.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved

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Governor.

