

HOUSE BILL No. 5491

February 6, 1992, Introduced by Reps. Randall, Middaugh, Banks, Muxlow, Stopczynski, Griffin, Owen and Bennett and referred to the Committee on Corporations and Finance.

A bill to amend the title and section 185 of Act No. 319 of the Public Acts of 1969, entitled as amended "Banking code of 1969," being section 487.485 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 TITLE

5 An act to revise and codify the laws relating to banks,
6 industrial banks, foreign banks, trust companies, and safe and
7 collateral deposit companies; to provide for their incorporation,
8 regulation, and supervision; TO AUTHORIZE THE GRANTING OF TRUST
9 POWERS TO BANKS AND TO REGULATE THE EXERCISE OF THOSE POWERS; to
10 create, within the department of commerce, a financial

1 institutions bureau and to prescribe its powers and duties; to
2 prescribe penalties for violations of this act; and to repeal
3 certain acts and parts of acts.

4 Sec. 185. (1) ~~Trust funds received by any bank~~ ASSETS
5 HELD BY A BANK AS FIDUCIARY and available for investment shall be
6 invested at the time and in the manner specified ~~in and~~ by the
7 agreement, instrument, or order creating or defining the trust or
8 other ~~holding and, unless otherwise specified in the agreement,~~
9 ~~instrument or order, may be invested in the same manner as an~~
10 ~~individual acting in a like capacity may invest trust funds under~~
11 ~~the laws of this state. Trust funds~~ CAPACITY IN WHICH THE BANK
12 IS ACTING OR, WHERE THE BANK HOLDS THE ASSETS AS AGENT, AS
13 DIRECTED OR PERMITTED BY THE BANK'S PRINCIPAL. IN THE ABSENCE OF
14 INVESTMENT SPECIFICATIONS OR LIMITATIONS IN THE AGREEMENT,
15 INSTRUMENT, OR ORDER, ASSETS HELD BY A BANK AS FIDUCIARY SHALL
16 WITHIN A REASONABLE TIME BE INVESTED IN REAL OR PERSONAL PROPER-
17 TY, OF WHATEVER TYPE OR NATURE, AS AN ORDINARILY PRUDENT PERSON
18 OF INTELLIGENCE AND INTEGRITY WHO IS A TRUSTEE OF THE MONEY OF
19 OTHERS WOULD PURCHASE, IN THE EXERCISE OF REASONABLE CARE, JUDG-
20 MENT, AND DILIGENCE UNDER THE CONDITIONS EXISTING AT THE TIME OF
21 PURCHASE, HAVING DUE REGARD, IN THE CASE OF A PURCHASE OF SECURI-
22 TIES, FOR THE MANAGEMENT, REPUTATION, AND STABILITY OF THE ISSUER
23 AND THE CHARACTER OF THE PARTICULAR SECURITIES.

24 (2) EXCEPT AS OTHERWISE PERMITTED BY LAW, A COURT ORDER, OR
25 THE AGREEMENT, INSTRUMENT, OR ORDER CREATING OR DEFINING THE
26 TRUST, OR OTHER CAPACITY IN WHICH THE BANK IS ACTING OR WITH THE
27 CONSENT OF ALL INTERESTED PARTIES OR THEIR REPRESENTATIVES, OR

1 WHERE THE BANK HOLDS THE ASSETS AS AGENT, AS DIRECTED OR
2 PERMITTED BY THE BANK'S PRINCIPAL, ASSETS HELD BY A BANK AS
3 FIDUCIARY shall not be invested in any securities or other prop-
4 erties, real or personal, purchased from the bank in its individ-
5 ual capacity or from any affiliate of the bank.

6 (3) NOTWITHSTANDING ANY OTHER STATUTORY OR COMMON LAW,
7 EXCEPT WHEN THE AGREEMENT, INSTRUMENT, OR ORDER CREATING OR
8 DEFINING THE TRUST OR OTHER CAPACITY IN WHICH THE BANK, OR THE
9 BANK AND A COFIDUCIARY, IS ACTING PROHIBITS THE INVESTMENT, A
10 BANK, OR A BANK AND A COFIDUCIARY, MAY INVEST IN A REGISTERED
11 INVESTMENT COMPANY ASSETS WITH RESPECT TO WHICH THE BANK, OR THE
12 BANK AND A COFIDUCIARY, EXERCISES INVESTMENT DISCRETION, EVEN
13 THOUGH EITHER OR BOTH OF THE FOLLOWING APPLY:

14 (A) THE BANK OR AN AFFILIATE OF THE BANK PROVIDES SERVICES
15 AS INVESTMENT ADVISER, SPONSOR, DISTRIBUTOR, MANAGER, CUSTODIAN,
16 TRANSFER AGENT, REGISTRAR, OR OTHERWISE, TO THE INVESTMENT COM-
17 PANY AND RECEIVES REASONABLE REMUNERATION FOR THOSE SERVICES.

18 (B) THE BANK AS FIDUCIARY OWNS OR CONTROLS A MAJORITY OF THE
19 VOTING SHARES OF THE INVESTMENT COMPANY OR A MAJORITY OF THE
20 SHARES VOTED FOR THE ELECTION OF ITS DIRECTORS OR TRUSTEES OR THE
21 BANK AS FIDUCIARY OTHERWISE CONTROLS THE ELECTION OF A MAJORITY
22 OF ITS DIRECTORS OR TRUSTEES.

23 (4) AS USED IN SUBSECTION (3), "REGISTERED INVESTMENT
24 COMPANY" MEANS AN INVESTMENT COMPANY THAT IS REGISTERED UNDER THE
25 INVESTMENT COMPANY ACT OF 1940, TITLE I OF CHAPTER 686,
26 54 STAT. 789.

1 (5) FOR PURPOSES OF THIS SECTION, A BANK IS CONSIDERED TO BE
2 HOLDING ASSETS IN A FIDUCIARY CAPACITY IF IT IS HOLDING THE
3 ASSETS AS TRUSTEE, PERSONAL REPRESENTATIVE, CUSTODIAN, CONSERVA-
4 TOR, GUARDIAN, AGENT, OR IN ANY OTHER FIDUCIARY CAPACITY.