

Act No. 394
Public Acts of 2002
Approved by the Governor
May 29, 2002
Filed with the Secretary of State
May 30, 2002
EFFECTIVE DATE: May 30, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Senator Steil

ENROLLED SENATE BILL No. 780

AN ACT to amend 1960 PA 136, entitled "An act in relation to the definition, licensing and regulating of the business of selling and issuing checks, drafts and money orders as a service or for a fee or other consideration; to permit the licensing of persons engaged in such business; to provide for the administration of this act; and to prescribe penalties," by amending sections 2, 12, and 15 (MCL 487.902, 487.912, and 487.915), sections 2 and 12 as amended by 1986 PA 275, and by adding sections 12b, 12c, 12d, 12e, 12f, 12g, and 12h.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) "Check" means any check, draft, money order, or other instrument for the transmission or payment of money.
- (b) "Commissioner" means the commissioner of the office of financial and insurance services and any authorized representative of the commissioner.
- (c) "Control person" means a director or executive officer of a licensee or a person who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee.
- (d) "Executive officer" means an officer, member, or partner of a licensee, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.
- (e) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any act listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.
- (f) "Licensee" means a person licensed under this act.
- (g) "Permissible investments" means 1 or more of the following:
 - (i) Cash.
 - (ii) Certificates of deposit or other debt instruments of a financial institution that are insured by an agency of the federal government and readily marketable.
 - (iii) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by member banks of the federal reserve system.
 - (iv) Commercial paper of prime quality as defined by a nationally recognized organization that rates commercial paper.
 - (v) Investment securities that are obligations of the United States or any of its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States, or any obligations of any state, municipality, or any political subdivision of any state or municipality.

(vi) Shares in a money market mutual fund, or interest-bearing bills, notes, or bonds.

(vii) Common or preferred stock traded on a national securities exchange. Investments in stock under this subparagraph shall not exceed 10% of the amount of permissible investments held by a licensee or 20% of the net worth of the licensee, whichever is less.

(viii) Any receivable that is due to any licensee from its agents under an agreement described in section 10a.

(ix) A demand borrowing agreement or agreements in an amount or aggregate amount that does not exceed 10% of the net worth of the company liable for payment under the agreement as shown on financial statements certified by a certified public accountant acceptable to the commissioner, which company is a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange and is not a licensee or agent of a licensee. The borrowing agreements shall be filed with the commissioner.

(x) Any other investments approved by the commissioner.

(h) "Person" means an individual, partnership, association, corporation, limited liability company, or any other entity.

(i) "Travelers check" means an instrument for the payment of money or a foreign currency instrument in any denomination, that provides for both of the following:

(i) A specimen signature of the purchaser to be completed at the time of purchase of the instrument.

(ii) A countersignature of the purchaser, to be completed when the instrument is negotiated.

Sec. 12. (1) A license shall not be denied, suspended, or revoked except on 10 days' notice to the applicant or licensee setting forth in writing the reasons for the denial, suspension, or revocation. Within 5 days after receipt of the notice the applicant or licensee may make written demand for a hearing. The commissioner with reasonable promptness shall hear and determine the matter as provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the applicant or licensee considers itself aggrieved by the order of the commissioner, the applicant or licensee may appeal within 30 days from the date of the order to the circuit court in the manner provided by the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and shall be entitled to the same judicial review as provided in that act. If an appeal is taken from an order revoking any license, the effect of the order may be stayed by the court pending the final determination of the appeal.

(2) The commissioner may make investigations and conduct hearings as the commissioner considers necessary to determine whether any licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that would justify suspension or revocation of its license.

(3) The commissioner may subpoena witnesses and documents, papers, books, records, and other evidence in any matter over which the commissioner has jurisdiction, control, or supervision. The commissioner may administer oaths and affirmations to any person whose testimony is required.

(4) If a person fails to comply with a subpoena issued by the commissioner or to testify with respect to any matter concerning which the person may be lawfully questioned, the commissioner may petition the circuit court for Ingham county to issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

Sec. 12b. (1) If in the opinion of the commissioner a licensee is, has, or is about to engage in a practice that poses a threat of financial loss or threat to the public welfare, or is, has, or is about to violate a law or rule, the commissioner may serve a notice of intention to issue a cease and desist order as provided in subsection (2).

(2) A notice served under this section shall contain a statement of the facts constituting the alleged practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued against the licensee.

(3) If the licensee fails to appear at the hearing by a duly authorized representative, the licensee shall have consented to the issuance of the cease and desist order.

(4) In the event of consent under subsection (3), or if upon the record made at the hearing, the commissioner finds that the practice or violation specified in the notice has been established, the commissioner may serve upon the licensee an order to cease and desist from the practice or violation. The order may require the licensee and its officers, directors, members, partners, trustees, employees, agents, and persons exercising control over the business activities of the licensee to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation.

(5) Except as provided in subsection (6) or to the extent it is stayed, modified, terminated, or set aside by the commissioner or a court, a cease and desist order shall become effective on the date of service.

(6) A cease and desist order issued upon consent shall become effective at the time specified in the order and remain effective and enforceable as provided in the order.

Sec. 12c. (1) As provided in section 14, the commissioner may investigate or conduct an examination of any person and conduct hearings as the commissioner considers necessary to determine whether a licensee or any other person has violated this act, or whether a licensee has conducted business in a manner that would justify suspension or revocation of its license.

(2) Upon the filing of a complaint or the taking of action against a licensee under section 12b, the commissioner may issue and serve upon a licensee an order suspending that person's license. The order shall be supported by an affidavit from a person familiar with the facts set forth in the affidavit and shall contain information that an imminent threat of financial loss or threat to the public welfare exists.

(3) Upon service of the order under subsection (2), the licensee shall have 20 days to file with the commissioner a request for a hearing. The hearing shall be scheduled within 20 days of the receipt of a request filed under this subsection.

(4) A suspension of a license under this section shall continue until the commissioner finds that the threat of financial loss or threat to the public welfare no longer exists.

Sec. 12d. (1) If in the opinion of the commissioner a person has engaged in fraud, the commissioner may serve upon that person a written notice of intention to prohibit that person from being employed by, an agent of, or control person of a licensee under this act or a licensee or registrant under a financial licensing act. For purposes of this section, "fraud" shall include actionable fraud, actual or constructive fraud, criminal fraud, extrinsic or intrinsic fraud, fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and, except as provided under subsection (7), set a hearing to be held not more than 60 days after the date of the notice. If the person does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If after a hearing held under subsection (2) the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of suspension or prohibition from being a licensee or registrant or from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act.

(4) An order issued under subsection (2) or (3) is effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee, agent, or control person. The order remains in effect until it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the person subject to the order may apply to the commissioner to terminate the order.

(6) If the commissioner considers that a person served a notice under subsection (1) poses an imminent threat of financial loss to purchasers of checks from a licensee, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee. The suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect pending the completion of a review as provided under this section and the commissioner has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the commissioner and the person served with an order issued under subsection (6), the hearing required under subsection (2) to review the suspension shall be held not earlier than 5 days or later than 20 days after the date of the notice.

(8) If a person is convicted of a felony involving fraud, dishonesty, or breach of trust, the commissioner may issue an order suspending or prohibiting that person from being a licensee and from being employed by, an agent of, or control person of any licensee under this act or a licensee or registrant under a financial licensing act. After 5 years from the date of the order, the person subject to the order may apply to the commissioner to terminate the order.

(9) The commissioner shall mail a copy of any notice or order issued under this section to the licensee of which the person subject to the notice or order is an employee, agent, or control person.

Sec. 12e. (1) A hearing under section 12b or 12d shall be conducted under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Within 30 days after the commissioner has notified the parties that the case has been submitted to him or her for final decision, the commissioner shall render a decision that shall include findings of fact supporting the decision and serve upon each party to the proceeding a copy of the decision and an order consistent with the decision.

(2) Except for a consent order, a party to the proceeding, or a person affected by an order issued under section 12b or section 12d may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the commissioner may terminate or set aside any order. The commissioner may terminate or set aside an order under judicial review with the permission of the court.

(3) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (2) does not stay the commissioner's order.

Sec. 12f. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 12b, 12c, or 12d.

Sec. 12g. In addition to any other penalties provided for under this act, any current or former executive officer, director, agent, or control person who violates a final order issued under section 12d is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Sec. 12h. A control person who is subject to an order issued under section 12d and who meets all of the following requirements is not in violation of the order:

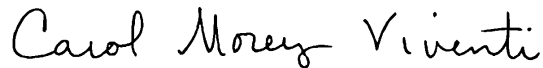
(a) The control person shall not in any manner, directly or indirectly, participate in the control of a licensee after the date the order is issued.

(b) The control person shall within 6 months after the date the order is final transfer any interest the control person owns in a licensee to an unrelated third party.

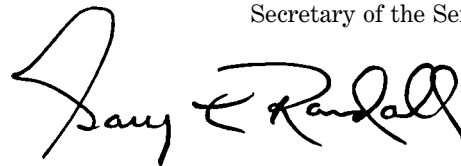
Sec. 15. (1) Except as provided under section 12h, a licensee shall not knowingly permit a person to violate an order that has been issued under this act or any other financial licensing act that prohibits that person from being employed by, an agent of, or a control person of the licensee.

(2) A person that violates this act is guilty of a misdemeanor punishable by a fine of not more than \$100.00 or by imprisonment for not more than 90 days, or both. Each transaction in violation of this act and each day that a violation continues is a separate offense under this section.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.