

(2) The authority may issue renewal notes, issue bonds to pay notes, and if it determines refunding expedient, refund bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

(4) Whether or not the notes or bonds are of a form or character as to be negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the notes or bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes or bonds for registration.

(5) Bonds and notes issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

This act is ordered to take immediate effect.

Approved May 24, 2002.

Filed with Secretary of State May 24, 2002.

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**[No. 382]**

**(SB 1177)**

AN ACT to amend 1964 PA 183, entitled “An act creating the state building authority with power to acquire, construct, furnish, equip, own, improve, enlarge, operate, mortgage, and maintain facilities for the use of the state or any of its agencies; to act as a developer or co-owner of facilities as a condominium project for the use of the state or any of its agencies; to authorize the execution of leases pertaining to those facilities by the building authority with the state or any of its agencies; to authorize the payment of true rentals by the state; to provide for the issuance of revenue obligations by the building authority to be paid from the true rentals to be paid by the state and other resources and security provided for and pledged by the building authority; to authorize the creation of funds; to authorize the conveyance of lands by the state or any of its agencies for the purposes authorized in this act; to authorize the appointment of a trustee for bondholders; to permit remedies for the benefit of parties in interest; to provide for other powers and duties of the authority; and to provide for other matters in relation to the authority and its obligations,” by amending section 8 (MCL 830.418), as amended by 1997 PA 127.

*The People of the State of Michigan enact:*

**830.418 Revenue obligations generally.**

Sec. 8. (1) By resolution or resolutions of its board, the building authority may provide for the issuance of revenue obligations, which may include revenue bonds, revenue notes,

or other evidences of revenue indebtedness, and refunding revenue bonds or notes, or other refunding evidences of indebtedness, the obligations for which shall not become a general obligation of this state or a charge against this state, but all revenue obligations and the interest on the revenue obligations and the call premiums for the revenue obligations shall be payable solely from true rental, except to the extent paid from the proceeds of sale of revenue obligations and any additional security provided for and pledged, or from other funds as provided in this act, and each revenue obligation shall have such a statement printed on the face of the revenue obligation. If the resolution of the building authority provides for interest coupons to be attached to a revenue obligation, each interest coupon shall have a statement printed on the coupon that the coupon is not a general obligation of this state or the building authority but is payable solely from certain revenues as specified in the revenue obligation. Revenue obligations may be issued for the purpose of paying part or all of the costs of the facilities or for the purpose of refunding or advance refunding, in whole or in part, outstanding revenue obligations issued pursuant to this act whether the obligations to be refunded or advance refunded have matured or are redeemable or shall mature or become redeemable after being refunded. The cost of the facilities may include an allowance for legal, engineering, architectural, and consulting services; interest on revenue obligations becoming due before the collection of the first true rental available for the payment of those revenue obligations; a reserve for the payment of principal, interest, and redemption premiums on the revenue obligations of the authority; and other necessary incidental expenses including, but not limited to, placement fees; fees or charges for insurance, letters of credit, lines of credit, remarketing agreements, or commitments to purchase obligations issued pursuant to this act; fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure; or any other fees or charges for any other security provided to assure timely payment of the obligations.

(2) The proceeds of a revenue obligation issue may be used to pay the cost of facilities that are subject to more than 1 lease if either subdivision (a) or (b) is true:

(a) Both of the following are true:

(i) The resolution authorizing the revenue obligations provides for the use of a specific allocable portion of the revenue obligation proceeds to pay the estimated cost of each of the facilities, together with the allocable portion of the reserves, discount, interest on the obligations becoming due before the first true rental available for payment of the obligations, and obligation issuance expense with respect to each facility.

(ii) The true rental and other funds of the building authority and other security as provided in this act available for the revenue obligations including other funds as provided in this act are sufficient to pay the allocable portion of the revenue obligation issue for which the true rental and other funds and security are pledged.

(b) The obligation is part of an interim financing pool described in subsection (20).

(3) Revenue obligations that refund outstanding obligations may include the payment of interest accrued, or to accrue, to the earliest or any subsequent date of redemption, purchase, or maturity of the revenue obligations to be refunded, redemption premium, if any, and any commission, service fee, and other expense necessary to be paid in connection with revenue obligations that refund outstanding obligations. Proceeds of refunding revenue obligations may also be used to pay part of the cost of issuance of the refunding revenue obligations, interest on the refunding revenue obligations, a reserve for the payment of principal, interest, and redemption premiums on the refunding revenue obligations, and other necessary incidental expenses including, but not limited to, placement fees; fees or charges for insurance, letters of credit, lines of credit, remarketing

agreements, or commitments to purchase obligations issued pursuant to this act; fees or charges associated with an agreement to manage payment, revenue, or interest rate exposure; or any other fees or charges for any other security provided to assure timely payment of the obligations. The building authority may also provide for the withdrawal of any funds from a reserve created for the payment of principal, interest, and redemption premiums on the refunded obligations and for the deposit of those funds in the reserve for the payment of principal, interest, and redemption premiums on the refunding obligations or may provide for use of that reserve money to pay principal, interest, and redemption premiums on the obligations to be refunded. Obligations issued to refund outstanding obligations may be issued in a principal amount greater than, the same as, or less than the principal amount of the obligations to be refunded, and subject to the maximum rate of interest provided in subsection (8), may bear interest rates that are higher than, the same as, or lower than the interest rates of the obligations to be refunded. If obligations are issued to refund outstanding obligations of the authority, a lease whose rental has been pledged for repayment of the obligations to be refunded shall not be terminated solely by reason of the payment or provision for payment of the obligations to be refunded, and the lease and all of the rights and obligations under the lease remain in full force and effect in accordance with its terms.

(4) Except as otherwise provided in this section, the building authority shall use income or profit derived from the investment of money in a fund or account of the building authority, including the proceeds of sale of the revenue obligations, only for the purpose of paying principal, interest, and redemption premiums on the revenue obligations of the building authority, or for any purpose for which the proceeds of the revenue obligations may be used under this act, as determined by the resolution of the board authorizing the issuance of revenue obligations.

(5) Within limits considered appropriate and established by the board, the board may authorize by resolution a member of the board or the person appointed by the building authority as its chief operating officer or chief staff person, if the authorization limits or prescribes the maximum interest rates, minimum price, maximum principal amount, and the latest maturity date of the obligations, to do any of the following:

(a) Determine interest rates or methods for determining interest rates for, maturities of, principal amounts of, denominations of, dates of issuance of, interest payment dates for, redemption rights and the terms under which redemption rights may be waived, transferred, or sold, prepayment rights with respect to, the purchase price of, and the type of funds for settlement of obligations.

(b) Determine which, if any, letter of credit, line of credit, standby note or bond purchase agreement, bond insurance, or other agreement providing security or liquidity for obligations of the building authority, approved by the board, provides a cost savings and should be entered into in connection with the issuance of the obligations of the building authority.

(c) Take any other action on behalf of the board within limitations established by the board as the board considers necessary in connection with the issuance of obligations of the building authority.

(6) To the extent provided by resolution of the board, principal of, and interest and redemption premiums on, revenue obligations issued for the purpose of paying all or part of the cost of the facilities shall be secured by and payable only from any or all of the following sources:

(a) The true rental derived from the facilities constructed or acquired with the proceeds of the revenue obligations.

(b) The proceeds of revenue obligations.

(c) The reserve, if any, established for the payment of principal of, or interest or redemption premiums on, the obligations.

(d) The proceeds of insurance, a letter of credit, or a line of credit acquired as security for the revenue obligations.

(e) The proceeds of obligations issued to refund the revenue obligations.

(f) The proceeds of the foreclosure or enforcement of a mortgage, security interest, or deed of trust on the facilities financed by the revenue obligations granted by the authority as security for the revenue obligations.

(g) Other funds of the authority not previously pledged for other obligations of the authority, including funds of the authority derived from rentals and other revenues, investment income or profit, or funds or accounts relating to other facilities, and payments received pursuant to an agreement to manage payment, revenue, or interest rate exposure as provided in subsection (19).

(h) Investment earnings and profits on any or all of the sources described in subdivisions (a) to (g).

(7) To the extent provided by resolution of the board, principal of, and interest and redemption premiums on, refunding revenue obligations shall be secured by and payable only from any or all of the following sources:

(a) The true rental derived from the facilities constructed or acquired with the proceeds of the obligations being refunded.

(b) The proceeds of the refunding obligations.

(c) The reserve, if any, established for the payment of the principal of, or interest and redemption premiums on, the refunding obligations or the obligations to be refunded.

(d) The proceeds of insurance, a letter of credit, or a line of credit acquired as security for the revenue obligations.

(e) The proceeds of obligations issued to refund the refunding obligations.

(f) The proceeds of the foreclosure or enforcement of any mortgage, security interest, or deed of trust on the facilities financed from the proceeds of the obligations being refunded, granted by the authority as security for the refunding obligations.

(g) Other funds of the authority not previously pledged for other obligations of the authority, including other funds of the authority derived from rentals and other revenues, investment income or profit, or funds or accounts relating to other facilities, and payments received pursuant to an agreement to manage payment, revenue, or interest rate exposure as provided in subsection (19).

(h) Investment earnings or profits on any of the sources described in subdivisions (a) to (g).

(8) Obligations issued under this act may be either serial obligations or term obligations, or any combination of serial or term obligations. The obligations shall mature not more than 40 years from their date, and in any event not more than 1 year from the due date of the last true rental pledged for the payment of the obligations, and may bear interest at fixed or variable interest rates, or may be without stated interest, but the net interest rate or rates of interest, taking into account any discount on the sale of the obligations, shall not exceed a rate permitted by the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The obligations may be sold at a discount.

(9) Except as otherwise provided in this subsection, in the resolution or resolutions authorizing the issuance of the obligations, the board shall determine the principal amount of the obligations to be issued, the registration provisions, the date of issuance, the

obligation numbers, the obligation denominations, the obligation designations, the obligation maturities, the interest payment dates, the paying agent or paying agents or the method of selection of the agent or agents, the rights of prior redemption of the obligations, and the terms under which redemption rights may be waived, transferred, or sold, the rights of the holders to require prepayment of the principal of or interest on the obligations, the maximum rate of interest, the method of execution of the obligations, and such other provisions respecting the obligations, the rights of the holders of the obligations, the security for the obligations, and the procedures for disbursement of the obligation proceeds and for the investment of the proceeds of obligations and money for the payment of obligations. Rather than making the determinations required by this subsection, the board may authorize a person identified in subsection (5) to make the determinations and take the actions authorized under subsection (5).

(10) The board in the resolution or resolutions authorizing the issuance of obligations may provide for the assignment of the true rental to be paid by the state under the lease or leases to 1 of the paying agents for the obligations or to a trustee, as provided in this act, in which case the state shall pay the rental to the paying agent or trustee. For the purposes and within the limitations set forth in this act, the board may by resolution covenant to issue or cause to be issued, or use its best efforts to issue or cause to be issued, refunding revenue obligations to refund obligations issued under this act.

(11) The board in the resolution, or resolutions, authorizing the obligations may provide for the terms and conditions upon which the holders of the obligations, or a portion of the obligations or a trustee for the obligations, is entitled to the appointment of a receiver. The receiver may enter and take possession of the facility, may lease and maintain the facility, may prescribe rentals and collect, receive, and apply income and revenues thereafter arising from the facility in the same manner and to the same extent that the authority is so authorized. The resolution or resolutions may provide for the appointment of a trustee for the holders of the obligations, may give to the trustee the appropriate rights, duties, remedies, and powers, with or without the execution of a deed of trust or mortgage, necessary and appropriate to secure the obligations, and may provide that the principal of and interest on any obligations issued under this act shall be secured by a mortgage, security interest, or deed of trust covering the facility, which mortgage, security interest, or deed of trust may contain the covenants, agreements, and remedies as will properly safeguard the obligations as may be provided for in the resolution or resolutions authorizing the obligations, including the right to sell the facility upon foreclosure sale, not inconsistent with this act.

(12) All obligations and the interest coupons, if any, attached to the obligations are declared to be fully negotiable and to have all of the qualities incident to negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, subject only to the provisions for registration of the obligations that may appear on the obligations. The obligations and interest on the obligations are exempt from all taxation by this state or any of its political subdivisions.

(13) The obligations may be sold at private or at public sale under the procedures and subject to the conditions prescribed by resolution of the board.

(14) The building authority may issue additional obligations of equal standing with respect to the pledge of the true rentals and additional security provided pursuant to this act with previously issued obligations of the building authority issued to acquire or construct a facility or facilities, or to refund the obligations, for the purpose of completing, or making additions, improvements, or replacements to, the facility or facilities for which the previous obligations of the authority were issued or to refund all or part of obligations

previously issued for such a facility, under the terms and conditions provided in the resolution authorizing the previous issue of obligations.

(15) The authority shall not have obligations outstanding at any 1 time for any of its corporate purposes in a principal amount totaling more than \$2,700,000,000.00, which limitations shall not include principal appreciation as provided in subsection (17) or obligations or portions of obligations used to pay for any of the following:

(a) Amounts set aside for payment of interest becoming due before the collection of the first true rental available.

(b) Amounts set aside for a reserve for payment of principal, interest, and redemption premiums.

(c) Costs of issuance of the obligations and the discount, if any, on sale.

(d) The sums expected to be set aside for the purposes provided in this subsection for any obligations authorized by the authority but not sold. The amount set aside or expected to be set aside for the purposes provided in this subsection shall be conclusively determined by a certificate setting forth the amounts executed by the executive director of the building authority. In addition, there shall be excluded from the limitation obligations issued to refund prior obligations if those prior obligations will not be retired within 90 days after the date of issuance of the refunding obligations. If an obligation is issued to retire a prior obligation within 90 days after the date of issuance of the refunding obligation, the obligation is counted against the limitation when the refunded obligation is retired.

(16) The authority may apply and pledge, if not already pledged, all or any unpledged part of the true rental and other revenues of a facility; income and profit from the investment of money pertaining to a facility; and money in a fund or account of the authority pertaining to a facility to pay the principal, interest, and redemption premiums on revenue obligations of the authority other than those to which the true rental and other revenues, investment income, or profit or funds or accounts pertain; to pay amounts due under an agreement to manage payment, revenue, or interest rate exposure regardless of the obligations or investments to which the agreement relates; or to pay part or all of the cost of additional facilities to be acquired by the authority for the use of the state. The authority may establish a separate fund into which the rental and other revenues, investment income or profit, or money of such a fund or account shall be deposited to be used to pay principal, interest, and redemption premiums on outstanding obligations of the authority or to acquire facilities for the use of this state. The authority shall not acquire a facility unless the acquisition is approved by the state administrative board and by a concurrent resolution of the legislature approved by a majority of the members elected to and serving in each house. The authority may pledge any or all of the foregoing to the payment of revenue obligations of the authority other than those to which they pertain. If the true rental and other revenues, investment income or profit, or the money in funds or accounts to be applied as specified in this subsection pertain to a facility leased to the state and an institution of higher education pursuant to a lease executed and delivered before January 1, 1983, no application or pledge thereof may be made unless approved by the institution of higher education.

(17) If the authority issues an obligation that appreciates in principal amount, the amount of principal appreciation each year on that obligation, after the date of original issuance, shall not be considered to be principal indebtedness for the purposes of the limitation in subsection (15) or any other limitation. The appreciation of principal after the date of original issue shall be considered interest and shall be within the interest rate limitations set forth in this act.



(18) Of the \$2,700,000,000.00 authorized under subsection (15), priority shall be determined by the joint capital outlay committee.

(19) In connection with an obligation issued previously or to be issued under this act or an investment made previously or to be made, the board may by resolution authorize and approve the execution and delivery of an agreement to manage payment, revenue, or interest rate exposure. The agreement may include, but is not limited to, an interest rate exchange agreement, an agreement providing for payment or receipt of money based on levels of or changes in interest rates, an agreement to exchange cash flows or series of payments, or an agreement providing for or incorporating interest rate caps, collars, floors, or locks. Subject to a prior pledge or lien created under this act, a payment to be made by the building authority under an agreement described in this subsection is payable, together with other obligations of the building authority, from those sources described in subsections (6) and (7), all with the parity or priority and upon the conditions set forth in the board's resolution. An agreement entered into under this subsection is not a general obligation of this state or the building authority, and the agreement does not count against the limitation on outstanding obligations contained in subsection (15).

(20) The building authority may authorize by resolution a pool of obligations to meet interim financing needs. A pool may be issued in 1 or more series, may relate to 1 or more projects, and is subject to all of the following:

(a) The board's resolution approving the pool shall state at least all of the following:

(i) The name or designation of the pool to distinguish it from any other pool issued under this subsection.

(ii) The latest date by which an obligation issued under the pool must mature, which shall not be later than 5 years after the date on which the pool is established. The duration of the pool shall be the time from the date on which the pool is established to the latest possible maturity date of obligations issued pursuant to the pool, or sooner as provided by resolution.

(iii) The maximum par amount of obligations that may be outstanding at any time during the duration of the pool. The resolution may state the maximum par amount of obligations that may be issued pursuant to the pool.

(iv) Other terms of the obligations as provided in subsection (8) or the limits within which the chief operating officer, chief staff person, or member of the board shall determine those terms as provided in subsection (5).

(v) The security for obligations issued pursuant to the pool.

(vi) Other provisions, not inconsistent with the terms of this act, that the board determines to be necessary or appropriate to the pool.

(b) Proceeds of obligations issued as part of a pool established under this subsection may be used for any of the purposes for which revenue obligations of the building authority may be used as described in subsection (1). However, an obligation shall not be issued with respect to a facility unless all of the following are true:

(i) The board approves the financing of the facility pursuant to the pool, which approval may be made at the same time as or after the establishment of the pool.

(ii) The board approves the proposed form of lease for the facility, which approval may be made prior to, at the same time as, or after the establishment of the pool.

(iii) The state administrative board, an institution of higher education, if applicable, and the legislature have approved the form of the lease as required by section 7, which approval may be made prior to, at the same time as, or after the establishment of the pool.

(iv) The aggregate amounts of obligations issued and outstanding with respect to a facility under a pool, together with other obligations that may have been issued and are outstanding with respect to the facility under this act do not exceed the cost of the facility, including allowable interest costs, as approved by the state administrative board, an institution of higher education, if applicable, and the legislature.

(v) On or before the issuance of obligations the proceeds of which are to finance the acquisition, construction, renovation, or rehabilitation of the facility, the building authority and the state, and, if applicable, an institution of higher education, enter into the lease or an agreement to construct or acquire the facility, which lease or agreement sets forth the terms and conditions under which the building authority will finance the construction or acquisition of the facility for lease to the state or to the state and any applicable institution of higher education.

(21) Bonds and notes issued under this act are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(22) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

This act is ordered to take immediate effect.

Approved May 24, 2002.

Filed with Secretary of State May 24, 2002.

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**[No. 383]**

**(SB 1179)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 19603 (MCL 324.19603), as added by 1998 PA 288.

*The People of the State of Michigan enact:*

**324.19603 Bonds; issuance; refund; security; authority of state treasurer; bonds not subject to revised municipal finance act; sale; issuance subject to agency financing reporting act; interest rate agreement.**

Sec. 19603. (1) The bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities that may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board and subject to covenants, directions, restrictions, or rights specified by resolution to be adopted by the



state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount provided in the clean Michigan initiative act, 1998 PA 284, MCL 324.95101 to 324.95108. Further, refunding bonds issued under this section are not subject to the restrictions of section 19607.

(3) The state administrative board may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

(a) Sell and deliver and receive payment for the bonds.

(b) Deliver bonds partly to refund bonds and partly for other authorized purposes.

(c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.

(d) Buy issued bonds at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The bonds or any series of the bonds shall be sold at a price as determined by the state administrative board.

(7) The bonds shall be sold in accordance with a schedule established by the state administrative board.

(8) The issuance of bonds under this section is subject to the agency financing reporting act.

(9) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

This act is ordered to take immediate effect.

Approved May 28, 2002.

Filed with Secretary of State May 28, 2002.

**[No. 384]****(HB 5661)**

AN ACT to amend 1897 PA 153, entitled “An act to provide for the payment of expenses in matters in which the state is a party or interested,” by amending section 1 (MCL 14.111); and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

**14.111 Appearance of attorney general in cases for state; expenses; authorization.**

Sec. 1. In all cases in which the state is a party or interested, in which the attorney general participates, whenever it becomes necessary to subpoena witnesses or to defray other necessary expenses of that litigation, the attorney general is hereby authorized to pay the amount that he or she considers necessary out of funds appropriated.

**Repeal of § 14.112.**

Enacting section 1. Section 2 of 1897 PA 153, MCL 14.112, is repealed.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 385]****(SB 1169)**

AN ACT to amend 1966 PA 346, entitled “An act to create a state housing development authority; to define the powers and duties of the authority; to establish a housing development revolving fund; to establish a land acquisition and development fund; to establish a rehabilitation fund; to establish a conversion condominium fund; to authorize the making and purchase of loans, deferred payment loans, and grants to qualified developers, sponsors, individuals, mortgage lenders, and municipalities; to establish and provide acceleration and foreclosure procedures; to provide tax exemption; to authorize payments in lieu of taxes by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations; and to prescribe criminal penalties for violations of this act,” by amending sections 22 and 25 (MCL 125.1422 and 125.1425), section 22 as amended by 1999 PA 131 and section 25 as amended by 1993 PA 220.

*The People of the State of Michigan enact:*

**125.1422 Powers of authority.**

Sec. 22. The authority shall possess all powers necessary or convenient to carry out this act, including the following powers in addition to other powers granted by other provisions of this act:

(a) To sue and to be sued; to have a seal and to alter the seal at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or

convenient to the exercise of the powers of the authority; and to make, amend, and repeal bylaws and rules.

(b) To undertake and carry out studies and analyses of housing needs within this state and ways of meeting those needs, including data with respect to population and family groups, the distribution of population and family groups according to income, and the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages, and other factors affecting housing needs and the meeting of housing needs; to make the results of those studies and analyses available to the public and the housing and supply industries; and to engage in research and disseminate information on housing.

(c) To agree and comply with conditions attached to federal financial assistance.

(d) To survey and investigate housing conditions and needs, both urban and rural, throughout this state and make recommendations to the governor and the legislature regarding legislation and other measures necessary or advisable to alleviate any existing housing shortage in this state.

(e) To establish and collect fees and charges in connection with the sale of the authority's publications and the authority's loans, commitments, and servicing, including but not limited to, the reimbursement of costs of financing by the authority, service charges, and insurance premiums as the authority determines to be reasonable and as approved by the authority. Fees and charges shall be determined by the authority and shall not be considered to be interest. The authority may use any accumulated fees and charges and interest income for achieving any of the corporate purposes of the authority, to the extent that the fees, charges, and interest income are not pledged to the repayment of bonds and notes of the authority or the interest on those bonds and notes.

(f) To encourage community organizations to assist in initiating housing projects as provided in this act.

(g) To encourage the salvage of all possible usable housing scheduled for demolition because of highway, school, urban renewal, or other programs by seeking authority for the sponsors of the programs to use funds provided for the demolition of the buildings, to be allocated to those sponsors approved by the authority to defray moving and rehabilitation costs of the buildings.

(h) To engage and encourage research in, and to formulate demonstration projects to develop, new and better techniques and methods for increasing the supply of housing for persons eligible for assistance as provided in this act; and to provide technical assistance in the development of housing projects and in the development of programs to improve the quality of life for all the people of this state.

(i) To make or purchase loans, including loans for condominium units as defined in section 4 of the condominium act, 1978 PA 59, MCL 559.104, and including loans to mortgage lenders, which are unsecured or the repayments of which are secured by mortgages, security interests, or other forms of security; to purchase and enter into commitments for the purchase of securities, certificates of deposits, time deposits, or mortgage loans from mortgage lenders; to participate in the making or purchasing of unsecured or secured loans and undertake commitments to make or purchase unsecured or secured loans; to sell mortgages, security interests, notes, and other instruments or obligations evidencing or securing loans, including certificates evidencing interests in 1 or more loans, at public or private sale; in connection with the sale of an instrument or obligation evidencing or securing 1 or more loans, to service, guarantee payment on, or repurchase the instrument or obligation, whether or not it is in default; to modify or alter mortgages and security interests; to foreclose on any mortgage, security interest, or other form of security; to

finance housing units; to commence an action to protect or enforce a right conferred upon the authority by law, mortgage, security agreement, contract, or other agreement; to bid for and purchase property that was the subject of the mortgage, security interest, or other form of security, at a foreclosure or at any other sale, and to acquire or take possession of the property. Upon acquiring or taking possession of the property, the authority may complete, administer, and pay the principal and interest of obligations incurred in connection with the property, and may dispose of and otherwise deal with the property in any manner necessary or desirable to protect the interests of the authority in the property. If the authority or an entity that provides mortgage insurance to the authority acquires property upon the default of a borrower, the authority may make a mortgage loan to a subsequent purchaser of that property even if the purchaser does not meet otherwise applicable income limitations and purchase price limits.

(j) To set standards for housing projects that receive loans under this act and to provide for inspections to determine compliance with those standards. The standards for construction and rehabilitation of mobile homes, mobile home parks, and mobile home condominium projects shall be established jointly by the authority and the mobile home commission, created in the mobile home commission act, 1987 PA 96, MCL 125.2301 to 125.2349. However, financing standards shall be established solely by the authority.

(k) To accept gifts, grants, loans, appropriations, or other aid from the federal, state, or local government, from a subdivision, agency, or instrumentality of a federal, state, or local government, or from a person, corporation, firm, or other organization.

(l) To acquire or contract to acquire from a person, firm, corporation, municipality, or federal or state agency, by grant, purchase, or otherwise, leaseholds or real or personal property, or any interest in a leasehold or real or personal property; to own, hold, clear, improve, and rehabilitate and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber any interest in a leasehold or real or personal property. This act shall not impede the operation and effect of local zoning, building, and housing ordinances, ordinances relating to subdivision control, land development, or fire prevention, or other ordinances having to do with housing or the development of housing.

(m) To procure insurance against any loss in connection with the property and other assets of the authority.

(n) To invest, at the discretion of the authority, funds held in reserve or sinking funds, or money not required for immediate use or disbursement, in obligations of this state or of the United States, in obligations the principal and interest of which are guaranteed by this state or the United States, or in other obligations as may be approved by the state treasurer.

(o) To promulgate rules necessary to carry out the purposes of this act and to exercise the powers expressly granted in this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(p) To enter into agreements with nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations that provide for regulation by the authority of the planning, development, and management of any housing project undertaken by nonprofit housing corporations, consumer housing cooperatives, limited dividend housing corporations, mobile home park corporations, and mobile home park associations and that provide for the disposition of the property and franchises of those corporations, cooperatives, and associations.

(q) To appoint to the board of directors of a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation,

or mobile home park association, a number of new directors sufficient to constitute a majority of the board notwithstanding other provisions of the articles of incorporation or other provisions of law. Directors appointed under this subsection need not be stockholders or members or meet other qualifications that may be described by the certificate of incorporation or bylaws. In the absence of fraud or bad faith, directors appointed under this subsection shall not be personally liable for debts, obligations, or liabilities of the corporation or association. The authority may appoint directors under this subsection only if 1 or more of the following occur:

(i) The nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association has received a loan or advance, as provided for in this act, and the authority determines that the loan or advance is in jeopardy of not being repaid.

(ii) The nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association received a loan or advance as provided for in this act and the authority determines that the proposed housing project for which the loan or advance was made is in jeopardy of not being constructed.

(iii) The authority determines that some part of the net income or net earnings of the nonprofit housing corporation is inuring to the benefit of a private individual, firm, corporation, partnership, or association; the authority determines that an unreasonable part of the net income or net earnings of the consumer housing cooperative is inuring to the benefit of a private individual, firm, corporation, partnership, or association; or the authority determines that some part of the net income or net earnings of the limited dividend housing corporation, in excess of that permitted by other provisions of this act, is inuring to the benefit of a private individual, firm, corporation, partnership, or association.

(iv) The authority determines that the nonprofit corporation or consumer housing cooperative is in some manner controlled by, under the direction of, or acting in the substantial interest of a private individual, firm, corporation, partnership, or association seeking to derive benefit or gain from, or seeking to eliminate or minimize losses in any dealings or transactions with, the nonprofit corporation or consumer housing cooperative. However, this subparagraph shall apply to individual cooperators in consumer housing cooperatives only in circumstances defined by the authority in its rules.

(v) The authority determines that the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is in violation of the rules promulgated under this section.

(vi) The authority determines that the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association is in violation of 1 or more agreements entered into with the authority that provide for regulation by the authority of the planning, development, and management of a housing project undertaken by the nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, mobile home park corporation, or mobile home park association or that provide for the disposition of the property and franchises of the corporation, or cooperative, or association.

(r) To give approval or consent to the articles of incorporation submitted to the authority by a corporation seeking approval as a nonprofit housing corporation, consumer housing cooperative, limited dividend housing corporation, or mobile home park corporation under chapter 4, 5, 6, or 8; to give approval or consent to the partnership agreement, joint venture agreement, trust agreement, or other document of basic organization of a limited

dividend housing association under chapter 7 or mobile home park association under chapter 9.

(s) To engage the services of private consultants on a contract basis for rendering professional and technical assistance and advice.

(t) To lease real or personal property and to accept federal funds for, and participate in, federal programs of housing assistance.

(u) To review and approve rental charges for authority-financed housing projects and require whatever changes the authority determines to be necessary. The changes shall become effective after not less than 30 days' written notice is given to the residents of the affected authority-financed housing projects.

(v) To set forth in the various loan documents of the authority those restrictions on the sale, conveyance by land contract, or transfer of residential real property, housing projects, or housing units for which a note is held by the authority and restrictions on the assumption by subsequent purchasers of loans originated by and held by, or originated for purchase by and held by, the authority as the authority determines to be necessary in order to comply with requirements of federal statutes, federal rules or regulations promulgated under sections 551 to 559 of title 5 of the United States Code, 5 U.S.C. 551 to 559, state statutes, or state rules promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, or to obtain and maintain the tax exempt status of authority bonds and notes. However, the authority shall not use a due on sale or acceleration clause solely for the purpose of renegotiating the interest rate on a loan made with respect to an owner-occupied single-family housing unit. Without limiting the authority's power to establish other restrictions, as provided in this section, on the sale, conveyance by land contract, or transfer of residential real property, housing projects, or housing units for which a note is held by the authority and the assumption by subsequent purchasers of loans made or purchased by the authority, the authority shall provide in its loan documents relating to a single family loan that the single family loan may be assumed by a new purchaser only when the new purchaser qualifies under the authority income limitations rules except where such a restriction diminishes or precludes the insurance or a guarantee by an agency of the federal government with respect to the single family loan. A loan made for a mobile home that the borrower does not intend to permanently affix to real property shall become immediately due and payable in the event the mobile home is moved out of the state. Any restrictions on conveyance by sale, conveyance by land contract, or transfer that are authorized in this section shall apply only to loans originated by and held by, or originated for purchase by and held by, the authority and may, at the option of the authority, be enforced by accelerating and declaring immediately due and payable all sums evidenced by the note held by the authority. An acceleration and declaration of all sums to be due and payable on conveyance by sale, land contract, or transfer is not an unreasonable restraint on alienation. An acceleration and declaration, unless otherwise prohibited in this subdivision, of all sums to be due and payable under this subdivision is enforceable in any court of competent jurisdiction. This subdivision is applicable to secured and unsecured loans. This subdivision is also applicable to loan documents utilized in conjunction with an authority-operated program of residential rehabilitation by an entity cooperating or participating with the authority under section 22a(4), which loans are originated with the intent to sell those loans to the authority.

(w) To set forth in the various loan documents of the authority those remedies for the making of a false statement, representation, or pretense or a material misstatement by a borrower during the loan application process. Without limiting the authority's power to pursue other remedies, the authority shall provide in its loan documents that, if a borrower makes a false statement, representation, or pretense or a material misstatement



during the loan application process, the authority, at its option, may accelerate and declare immediately due and payable all sums evidenced by the note held by the authority. An acceleration and declaration of all sums to be due as authorized under this subdivision and payable as provided in this subdivision is enforceable in any court of competent jurisdiction. This subdivision is applicable to secured and unsecured loans.

(x) To collect interest on a real estate loan, the primary security for which is not a first lien on real estate, at the rate of 15% or less per annum on the unpaid balance. This subdivision does not impair the validity of a transaction or rate of interest that is lawful without regard to this subdivision.

(y) To encourage and engage or participate in programs to accomplish the preservation of housing in this state available for occupancy by persons and families of low or moderate income.

(z) To verify for the state treasurer statements submitted by a city, village, township, or county as to exempt properties under section 7d of the general property tax act, 1893 PA 206, MCL 211.7d.

(aa) For the purpose of more effectively managing its debt service, to enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

(bb) To make working capital loans to contractors or subcontractors on housing projects financed by the authority. The authority shall submit an annual report to the legislature containing the amount, recipient, duration, circumstance, and other related statistics for each capital loan made to a contractor or subcontractor under this subdivision. The authority shall include in the report statistics related to the cost of improvements made to adapt property for use by disabled individuals as provided in section 32b(5) or (6) or section 44(2)(a).

(cc) Subject to rules of the civil service commission, to adopt a code of ethics with respect to its employees that requires disclosure of financial interests, defines and precludes conflicts of interest, and establishes reasonable post-employment restrictions for a period of up to 1 year after an employee terminates employment with the authority.

(dd) To impose covenants running with the land in order to satisfy requirements of applicable federal law with respect to housing assisted or to be assisted through federal programs such as the low income housing tax credit program or the home investment partnerships program by executing and recording regulatory agreements between the authority or such municipality or other entity as may be designated by the authority and the person or entity to be bound. These covenants shall run with the land and be effective with respect to the parties making the covenants and other intended beneficiaries of the covenants, even though there is no privity of estate or privity of contract between the authority and the persons or entities to be bound.

(ee) To impose covenants running with the land in order to satisfy requirements of applicable state or federal law with respect to housing financed by the authority by executing and recording regulatory agreements between the authority and the person or entity to be bound. These covenants shall run with the land and be effective with respect to the parties making the covenants and other intended beneficiaries of the covenants, even though there is no privity of estate or privity of contract between the authority and the persons or entities to be bound. With respect to the application of any applicable environmental laws, this subdivision shall not be construed to grant to the authority any additional rights, privileges, or immunities not otherwise afforded to a private lender that is not in the chain of title for the land.

(ff) To participate in programs designed to assist persons and families whose incomes do not exceed 115% of the greater of statewide median gross income or the area median gross income become homeowners where loans are made by private lenders for purchase by the government national mortgage association, federal national mortgage association, federal home loan mortgage corporation, or other federally chartered organizations. Participation may include providing or funding homeownership counseling and providing some or all of a reserve fund to be used to pay for losses in excess of insurance coverage.

(gg) To invest up to 20% of funds held by or for the authority in escrow accounts for the benefit of the authority or mortgagors of authority-financed housing in loans originated or purchased by the authority, under the conditions prescribed in this subdivision and without the consent of the escrow depositors. In connection with loans described in this subdivision, the authority may charge and retain fees in amounts similar to those charged with respect to similar loans for which the source of funding does not come from escrow funds. The investment authorized by this subdivision shall not be made unless both of the following requirements are met:

(i) The return on the loan is approximately equivalent to that which could be obtained from investments of substantially similar credit quality and maturity, as determined by the authority.

(ii) The authority agrees to repurchase from its own funds and at the same prices at which the loans were sold to the escrow funds, as adjusted for the accretion of discount or amortization of premium, plus accrued interest, any loans that become delinquent in excess of 30 days. This subdivision does not obligate the authority to purchase a delinquent loan so long as with respect to that loan the authority advances money from its own funds in the amount of the delinquent payments. The authority's election to advance payments does not in any manner abate or cure the delinquency of the loan and the authority may resort to any remedies that would exist in the absence of that payment.

(hh) To acquire, develop, rehabilitate, own, operate, and enter into contracts with respect to the management and operation of real and personal property to use as office facilities by the authority and to enter into leases with respect to facilities not immediately necessary for the activities of the authority.

(ii) To make loans to certain qualified buyers and resident organizations and to make grants to resident organizations as provided in the following:

(i) The urban homestead act, 1999 PA 127, MCL 125.2701 to 125.2709.

(ii) The urban homesteading on vacant land act, 1999 PA 129, MCL 125.2741 to 125.2748.

(iii) The urban homesteading in single-family public housing act, 1999 PA 128, MCL 125.2761 to 125.2770.

(iv) The urban homesteading in multifamily public housing act, 1999 PA 84, MCL 125.2721 to 125.2734.

**125.1425 Bonds and notes; issuance; purposes; issuing renewal notes, bonds to pay notes and refunding bonds; notes or bonds as general obligations and negotiable instruments; revised municipal finance act inapplicable; issuance subject to agency financing reporting act.**

Sec. 25. (1) The authority may issue its negotiable bonds and notes in a principal amount, which in the opinion of the authority shall be necessary to provide sufficient funds for achieving its corporate purposes, including the making of loans for housing projects

and the making or purchasing of loans for the rehabilitation of residential real property, the provision of money for the land acquisition and development fund as provided in this act, the payment of interest on bonds and notes of the authority during construction, the establishment of reserves to secure bonds and notes, the provision of money for the housing development fund in order to make noninterest bearing advances to nonprofit housing corporations and consumer housing cooperatives as provided in this act, the provision of money to be used for the land acquisition and development powers and purposes of the authority, the development, rehabilitation, or acquisition of real and personal property for use as office facilities by the authority, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The authority may issue renewal notes, issue bonds to pay notes, and when it determines refunding expedient, refund bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. The authority may issue instruments separate from the obligations described in this section that establish a contractual right in the holder of the instrument to require mandatory tender for purchase of the obligations to which the instrument applies for such period of time and subject to such provisions as the authority may determine.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be general obligations of the authority payable out of revenues or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging any particular receipts or revenues.

(4) Whether or not the notes or bonds are of a form or character as to be negotiable instruments under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, the notes or bonds shall be and are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, subject only to the provisions of the notes or bonds for registration.

(5) A bond issued by the authority is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 386]****(SB 1178)**

AN ACT to amend 1985 PA 227, entitled “An act to create the Michigan municipal bond authority and to prescribe its powers and duties; to provide for the issuance of, and terms and conditions for, notes and bonds of the authority; to authorize certain forms of assistance to governmental units including the creation and management of investments; to impose conditions on, grant certain powers to political subdivisions of the state and water suppliers regarding, and allow certain agreements regarding obligations of political

subdivisions of this state and water suppliers purchased by the authority; to exempt the property, income, and operation of the authority, its bonds and notes, and the interest on its bonds and notes from certain taxes; to grant powers and impose duties on officers and agencies of the state, political subdivisions of this state, and water suppliers; to accept and expend certain appropriations; and to repeal acts and parts of acts,” by amending section 9 (MCL 141.1059), as amended by 1988 PA 316.

*The People of the State of Michigan enact:*

**141.1059 Bonds or notes of authority; purposes; payment; security; authorization; requirements; validity of signature; sale; revised municipal finance act inapplicable; issuance of bonds subject to agency financing reporting act; interest rate exchange agreement.**

Sec. 9. (1) The authority may issue from time to time authority bonds or notes in the principal amounts the authority considers necessary to provide funds for any purposes including, but not limited to, the making of loans; the payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due; the establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes; the payment of interest on the bonds or notes for a period as the authority determines; the funding of a state match requirement for a capitalization grant or to reimburse an advance for that state match requirement; and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the bond or note authorizing resolution. Authority bonds or notes may be additionally secured by a pledge of any grant or contributions from the United States, this state, a governmental unit, or any person, firm, or corporation, or by a pledge of income or revenues, funds, or money of the authority from any source whatsoever.

(3) Bonds or notes of the authority shall be authorized by resolution of the authority and may be issued in 1 or more series and shall bear the date or dates of issuance; mature at the time or times not exceeding 50 years from the date of their issue; provide sinking fund payments; bear interest at a fixed or variable rate or rates of interest per annum or at no interest; be in the denomination or denominations; be in the form, either coupon or registered; carry the conversion or registration privileges; have the rank or priority; be executed in the manner; be payable from the sources in the medium of payment at the place or places within or without this state; and be subject to redemption at the option of the authority or the holder and with the terms and redemption premiums as the resolution provides.

(4) If a member of the board, the executive director of the authority, or an officer of the authority whose signature or facsimile of a signature appears on a note, bond, or coupon ceases to be a member, executive director, or officer before the delivery of that note or bond, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the member, executive director, or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. An authority bond or note is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101

to 141.2821.

(6) The issuance of bonds and notes under this act is subject to the agency financing reporting act.

(7) For the purpose of more effectively managing its debt service, the authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 387]**

**(SB 1180)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 50510 (MCL 324.50510), as added by 1995 PA 57.

*The People of the State of Michigan enact:*

**324.50510 Bonds and notes; purposes; payment; requirements; signature of board member or office of authority; sale of bonds or notes; applicability of other laws; interest rate agreement.**

Sec. 50510. (1) The authority may issue from time to time bonds or notes in principal amounts the authority considers necessary to provide funds for any purpose, including, but not limited to, all of the following:

(a) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on bonds or notes issued by the authority whether the bonds or notes or interest to be funded or refunded have or have not become due.

(b) The establishment or increase of reserves to secure or to pay authority bonds or notes or interest on those bonds or notes.

(c) The payment of interest on the bonds or notes for a period as the authority determines.

(d) The payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The bonds or notes of the authority shall not be a general obligation of the authority but shall be payable solely from the revenues or funds, or both, pledged to the payment of the principal of and interest on the bonds or notes as provided in the resolution authorizing the bond or note.

(3) The bonds or notes of the authority:

- (a) Shall be authorized by resolution of the authority.
- (b) Shall bear the date or dates of issuance.
- (c) May be issued as either tax-exempt bonds or notes or taxable bonds or notes for federal income tax purposes.
- (d) Shall be serial bonds, term bonds, or term and serial bonds.
- (e) Shall mature at such time or times not exceeding 30 years from the date of issuance.
- (f) May provide for sinking fund payments.
- (g) May provide for redemption at the option of the authority for any reason or reasons.
- (h) May provide for redemption at the option of the bondholder for any reason or reasons.
- (i) Shall bear interest at a fixed or variable rate or rates of interest per annum or at no interest.
- (j) Shall be registered bonds, coupon bonds, or both.
- (k) May contain a conversion feature.
- (l) May be transferable.
- (m) Shall be in the form, denomination or denominations, and with the other provisions and terms as is determined necessary or beneficial by the authority.

(4) If a member of the board or any officer of the authority whose signature or facsimile of his or her signature appears on the note, bond, or coupon ceases to be a member or officer before the delivery of that note or bond, the signature shall continue to be valid and sufficient for all purposes, as if the member or officer had remained in office until the delivery.

(5) Bonds or notes of the authority may be sold at a public or private sale at the time or times, at the price or prices, and at a discount as the authority determines. Bonds and notes of the authority are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The bond or note of the authority is not required to be filed under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818.

(6) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(7) For the purpose of more effectively managing its debt service, the authority may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the authority.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 388]**

**(SB 1181)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain



substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 71503 (MCL 324.71503), as amended by 1995 PA 72.

*The People of the State of Michigan enact:*

### **324.71503 Bonds; requirements generally.**

Sec. 71503. (1) The bonds issued under part 713 shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities that may be either serial, term, or term and serial, to bear interest at a rate or rates, to be subject or not subject to prior redemption and, if subject to prior redemption, with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative board, and to be subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax-exempt status. The state administrative board shall rotate legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds to partly refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued under this section shall not be counted against the limitation on principal amount imposed by the vote of the people on November 8, 1988. Further, refunding bonds issued under this section shall not be subject to the restrictions of section 71507.

(3) The state administrative board may authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this act.

(4) The state administrative board may authorize the state treasurer, but only within limitations that are contained in the authorizing resolution of the board, to do 1 or more of the following:

- (a) Sell and deliver and receive payment of the bonds.
- (b) Deliver bonds partly to refund bonds and partly for other authorized purposes.
- (c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.
- (d) Buy bonds so issued at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(6) The bonds or any series of the bonds shall be sold at a price and at a publicly advertised sale or a competitively negotiated sale as determined by the state administrative board. If bonds are issued at a competitively negotiated sale, the state administrative board shall use its best efforts to include firms based in this state in the sale of the bonds.

(7) Except as provided in subsection (8), the bonds shall be sold in accordance with the following schedule, beginning during the first year after December 1, 1988:

(a) Not more than 34% shall be sold during the first year.

(b) Not more than 33% shall be sold during the second year.

(c) Not more than 33% shall be sold during the third year.

(d) After the third year any remaining bonds may be sold at the discretion of the state administrative board.

(8) The state administrative board may alter the schedule for issuance of the bonds provided in subsection (7) if amendments to the internal revenue code of 1986 would impair the tax-exempt status of the bonds.

(9) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(10) For the purpose of more effectively managing its debt service, the state administrative board may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the state administrative board.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 389]**

**(SB 1182)**

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts,” by amending section 76703 (MCL 324.76703), as amended by 2001 PA 78.

*The People of the State of Michigan enact:*

**324.76703 Mackinac Island state park commission; gross revenue bonds; purpose; cost; interim receipts or certificates; maximum rate of interest; sale and award of notes; notice; resolution; contents; trust indenture; money received as trust funds; disposition; gross revenue refunding bonds; powers of commission; annual**

**audit; signature on bonds; attestation; electronic format; issuance of bonds subject to agency financing reporting act; interest rate agreement.**

Sec. 76703. (1) The commission may issue its gross revenue bonds in anticipation of the collection of all or any part of its revenues, for the purpose of acquiring, constructing, reconstructing, improving, bettering, extending, restoring, refurbishing, renovating, repairing, equipping, furnishing, any or all, the properties and facilities that it is authorized to acquire, construct, reconstruct, maintain, or operate under this part, including properties and facilities owned by it, and shall pledge to the payment of the interest on and principal of the bonds, all or any part of the revenues derived from the operation of the properties and facilities controlled and operated by the commission. There may be included in the cost for which bonds are to be issued, reasonable allowances for legal, engineering, or fiscal services, interest during construction or reconstruction and for 6 months after the estimated date of completion of the construction or reconstruction or until full revenues are being received from the operation of the facility, and other incidental expenses. The bonds shall be authorized by resolution of the commission and may be issued in 1 or more series, may bear the date or dates, may mature at the time or times not exceeding 30 years from their respective dates, may bear interest at the rate or rates, may be in the form, either coupon or registered, may be executed in the manner, may be payable at the place or places, may be subject to the terms of redemption, with or without premium, and may contain the terms, covenants, and conditions as the resolution or subsequent resolution may provide. Pending preparation of the definitive bonds, interim receipts, or certificates in the form and with the provisions as the commission may determine may be issued to the purchaser or purchasers of the bonds sold pursuant to this part. The bonds and interim receipts and certificates shall be fully negotiable within the meaning of and for all purposes of the negotiable instruments law of this state. The maximum rate of interest on such bonds shall be that set forth for bonds issued under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The sale and award of notes shall be conducted and made by the commission at a public or private sale. If a public sale is held, the notes shall be advertised for sale once not less than 7 days before sale in a publication printed in the English language and circulated in this state, which carries as a part of its regular service notices of the sales of municipal bonds and which has been designated in the resolution as a publication complying with these qualifications. The notice of sale shall be in the form as designated by the commission. Bonds may be sold at a discount as provided in the bond resolution. Bonds issued under this section are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(2) Any resolution authorizing the issuance of bonds under this part or any instrument of trust entered into as authorized by this part may contain covenants, including, but not limited to, any of the following:

- (a) The purpose or purposes to which the proceeds of the sale of the bonds may be applied, and the deposit, use, and disposition of the proceeds.
- (b) The use, deposit, securing of deposits, and disposition of the revenues of the commission, including the creation and maintenance of reserves.
- (c) The issuance of additional bonds payable from the revenues of the commission.
- (d) The operation and maintenance of properties of the commission.
- (e) The insurance to be carried thereon, and the use, deposit, and disposition of insurance money.
- (f) Books of account and the inspection and audit of the books of account and the accounting methods of the commission.

(g) The nonrendering of any free service by the commission.

(h) The preservation of the properties of the commission, so long as any of the bonds remain outstanding, from any mortgage, sale, lease, or other encumbrance not specifically permitted by the terms of the resolution.

(i) The employment of sufficient personnel for the collection of fees and charges incident to the operation of the facility and for the payment of compensation to the personnel out of the fees and charges.

(3) In the discretion of the commission, any bonds issued under this part may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any bank having the right to exercise the powers of a trust company within this state. Any trust indenture described in this subsection may pledge or assign the revenues from the operation of properties of the commission, but shall not convey or mortgage any properties, except the revenues. Any trust indenture or any resolution providing for the issuance of bonds may contain the provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the improvements in connection with which the bonds have been authorized, and the custody, safeguarding, and application of all money, and provisions for the employment of consulting engineers, architects, and landscape architects in connection with the planning, construction, or operation of the improvements. Any trust indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of corporations. In addition to the foregoing, any trust indenture or resolution may contain other provisions as the commission considers reasonable and proper for the security of the bondholders. The holder of any bond issued under this part or a trustee in his or her behalf may bring suit against the commission and its members, officers, and agents to enforce the provisions and covenants contained in any trust indenture or resolution. All expenses incurred in carrying out the provisions of any trust indenture may be treated as a part of the cost of operation of the improvements for which the bonds are authorized.

(4) Money received pursuant to this part, whether as proceeds from the sale of bonds or as revenues from the operations of properties, or otherwise received by the commission, shall be considered to be trust funds, to be held and applied solely as provided in this part and in the resolution authorizing, or trust indenture securing, its bonds. All money received may be deposited in as received and paid out by any bank or banks selected for the purpose and eligible to hold public money under the laws of this state, the deposits and paying out to be in the manner provided in the resolution or trust indenture. None of the money need be paid into the state treasury.

(5) If the commission has issued any bonds under this part, the commission may subsequently issue and negotiate new bonds under this part for the purpose of providing for the retirement of those outstanding bonds, in whole or in part. The new bonds shall be designated “gross revenue refunding bonds”, and except as otherwise provided in the refunding resolution, shall be secured to the same extent and shall have the same source of payment as the bonds that have been refunded, or may be payable from earnings on investments held in trust to pay refunded bonds for the period of time specified in the ordinance authorizing the bonds. The refunding bonds may be issued to include the amount of any premium to be paid upon the calling of the callable bonds to be refunded or any premium necessary to be paid in order to secure the surrender of the noncallable bonds to be refunded, interest to the maturity or redemption date of the bonds to be

refunded, and the cost of issuing the refunding bonds. This section shall not be construed as providing for the redemption of noncallable unmatured bonds without the consent of the holder or holders of the bonds. The refunding bonds may be sold at public sale, may be privately negotiated, or may be exchanged for the obligations to be refunded by the obligations, and if sold, the proceeds shall be deposited in a bank and credited to a special trust account to be used only for the redemption or purchase of the outstanding bonds. If refunding bonds are to be issued and sold for the purpose of refunding noncallable unmatured bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal and interest to maturity on noncallable bonds. If refunding bonds are to be issued for the purpose of refunding callable bonds, those bonds shall be surrendered and canceled at the time of delivery to the purchaser of the refunding bonds, or sufficient funds shall be deposited in trust to pay principal, interest, and redemption premium to the earliest redemption date on callable bonds. When the resolution authorizing the bonds to be refunded permits, the borrower may deposit in trust direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States and which do not permit redemption at the option of the issuer, the principal and interest on which when due, without reinvestment, will provide funds sufficient to pay principal, interest, and call premium, when due, on the bonds being refunded.

(6) Notwithstanding the other provisions of this section:

(a) Interest on the bonds may be payable at any time provided in the resolution, and may be set, reset or calculated, or both, as provided in the resolution.

(b) If so authorized in the resolution bonds may be:

(i) Made the subject of a put or agreement to repurchase by the commission.

(ii) Secured by a letter of credit issued by a bank pursuant to an agreement entered into by the commission or secured by any other collateral.

(iii) Callable.

(iv) Reissued by the commission once reacquired by the commission pursuant to any put or repurchase agreement.

(c) The commission may by resolution do any of the following:

(i) Authorize the issuance of renewal bonds.

(ii) Refund, or refund in advance, bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured.

(iii) Issue bonds partly to refund bonds and partly for any other purposes authorized by this part.

(iv) Buy and sell any bonds issued under this part.

(d) Renewal, refunding, or advance refunding bonds are subject to all of the following:

(i) Shall be sold and the proceeds applied to the purchase redemption or payment of the bonds to be renewed or refunded.

(ii) May be sold or resold at a public or private sale upon such terms and conditions as the commission may establish in the order.

(iii) May pledge the revenues pledged in the issue to be refunded in advance effective when a defeasance has occurred with respect to the original issue.

(e) If authorized by the commission in the resolution authorizing the bonds, any bonds issued may be secured in whole or in part pursuant to a trust or escrow agreement, which agreement may also govern the issuance of renewal bonds, refunding bonds, and advance

refunding bonds. The agreement may authorize the trustee or escrow agent to make investments of any type authorized in the agreement.

(f) Powers specified in this subsection shall be in addition to those set forth in all other subsections and sections of this part.

(7) The commission shall hire an independent certified public accountant approved by the legislative auditor general to perform an annual audit of all of its operations which are required by, or in any way relate to, any covenants made in connection with any bonds issued pursuant to this part.

(8) The bonds may be issued in electronic format only or, if issued in paper copies, shall be signed by the chairperson or vice-chairperson of the commission and attested to by any other officer of the commission authorized to do so by resolution of the commission. The signature of either officer, but not both, may be affixed by facsimile or electronically.

(9) The issuance of bonds and notes under this section is subject to the agency financing reporting act.

(10) For the purpose of more effectively managing its debt service, the commission may enter into an interest rate exchange or swap, hedge, or similar agreement with respect to its bonds or notes on the terms and payable from the sources and with the security, if any, as determined by a resolution of the commission.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 390]**

**(SB 776)**

AN ACT to amend 1988 PA 161, entitled “An act to regulate the providing of certain consumer financial services; to provide for licensing of certain financial institutions; to prescribe powers and duties of certain state departments and agencies; to prohibit certain activities; and to provide for remedies and penalties,” by amending sections 2 and 17 (MCL 487.2052 and 487.2067), as amended by 1999 PA 275, and by adding sections 10f, 10g, 10h, 10i, 10j, and 10k.

*The People of the State of Michigan enact:*

**487.2052 Definitions.**

Sec. 2. As used in this act:

(a) “Applicant” means a person that has applied to the commissioner to be licensed under this act.

(b) “Bureau” means the office of financial and insurance services of the department of consumer and industry services.

(c) “Business activity” means any activity regulated by any of the financial licensing acts identified under subdivision (d).

(d) “Class I license” means a license issued under this act that authorizes the licensee to engage in all of the activities permitted under the regulatory loan act of 1963, 1939 PA 21, MCL 493.1 to 493.25, the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to



493.81, the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141, 1984 PA 379, MCL 493.101 to 493.114, the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(e) “Class II license” means a license issued under this act that authorizes all of the activities permitted under a class I license except for activities permitted under the sale of checks act, 1960 PA 136, MCL 487.901 to 487.916, loan servicing activities under the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(f) “Commissioner” means the commissioner of the office of financial and insurance services or an authorized representative of the commissioner.

(g) “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.

(h) “Depository financial institution” means a bank, savings and loan association, savings bank, or credit union organized under the laws of this state, another state, the District of Columbia, the United States, or a territory or protectorate of the United States, whose deposits are insured by an agency of the federal government.

(i) “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.

(j) “Financial licensing acts” means the acts listed in subdivision (d).

(k) “Licensee” means a person that is licensed under this act.

(l) “Loan servicing activities” means the collection or remittance for a lender, noteowner, noteholder, or the licensee’s own account of 4 or more installment payments of the principal, interest, or an amount placed in escrow under a mortgage servicing agreement or a mortgage loan subject to the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, or a mortgage servicing agreement or secondary mortgage loan subject to the secondary mortgage loan act, 1981 PA 125, MCL 493.51 to 493.81, or an agreement with the mortgagor.

(m) “Person” means an individual, corporation, partnership, association, limited liability company, or any other legal entity.

#### **487.2060f Investigation or examination by commissioner; complaint or action; suspension of license; request for hearing; duration of suspension.**

Sec. 10f. (1) As provided in section 10(4), 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 10(7), 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.

#### **487.2060g Fraud.**

Sec. 10g. (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 applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or 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.

#### **487.2060h Hearing; decision; findings; judicial review; stay.**

Sec. 10h. (1) A hearing under section 10 or 10g 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 10 or section 10g 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.

#### **487.2060i Enforcement of order; jurisdiction.**

Sec. 10i. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 10, 10f, or 10g.

#### **487.2060j Violation as misdemeanor; penalty.**

Sec. 10j. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 10g 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.

#### **487.2060k Violation of order; exceptions.**

Sec. 10k. A control person who is subject to an order issued under section 10g(6) 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.

#### **487.2067 Prohibited activities or practices.**

Sec. 17. A licensee under this act shall not do any of the following:

(a) Engage in the business of a real estate broker or real estate salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(b) Engage in the business of a pawnbroker licensed under 1917 PA 273, MCL 446.201 to 446.219.

(c) Engage in the business of a debt management company licensed under the debt management act, 1975 PA 148, MCL 451.411 to 451.437.

(d) Entering into a tying arrangement through which the licensee conditions the sale of 1 financial service to a consumer on the agreement by the consumer to purchase 1 or more other financial services from the licensee, an affiliate, or subsidiary of the licensee.

(e) 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.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 391]**

**(SB 777)**

AN ACT to amend 1987 PA 173, entitled “An act to define and regulate mortgage brokers, mortgage lenders, and mortgage servicers; to prescribe the powers and duties of the financial institutions bureau and certain public officers and agencies; to provide for the promulgation of rules; and to provide remedies and penalties,” by amending sections 1a, 11, and 22 (MCL 445.1651a, 445.1661, and 445.1672), sections 1a and 22 as amended by 1996 PA 210, and by adding sections 18a, 18b, 18c, 18d, and 18e.

*The People of the State of Michigan enact:*

**445.1651a Definitions.**

Sec. 1a. As used in this act, unless the context requires otherwise:

(a) “Affiliate” means a person or group of persons that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with another person and engaged in a business or transaction regulated by this act.

(b) “Commissioner” means the commissioner of the office of financial and insurance services of the department of consumer and industry services or his or her authorized agent.

(c) “Construction loan” means a mortgage loan for the purpose of constructing a 1-to-4 family dwelling, which loan is approved and closed before completion of the construction of the improvement on the real property.

(d) “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 or registrant.

(e) “Depository financial institution” means a state or nationally chartered bank, a state or federally chartered savings and loan association, savings bank, or credit union, or an entity of the federally chartered farm credit system.

(f) “Executive officer” means an officer, member, or partner of a licensee or registrant, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(g) “Financial licensing act” means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, and any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(h) “Firm commitment” means an underwriting in which a broker-dealer commits to buy the mortgage loan or the entire issue of securities based upon or backed by 1 or more mortgage loans and assumes all financial responsibility for any unsold securities.

(i) “Individual investor” means a person residing in this state or having its principal place of business in this state, other than a bank, savings bank, savings and loan association, credit union, trust company, insurance company, investment company as defined in the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64, pension or profit sharing plan, the assets of which are managed by a bank or trust company or other institutional manager, financial institution, institutional manager, broker-dealer that is a member of the New York stock exchange or registered under the uniform securities act, 1964 PA 265, MCL 451.501 to 451.818, the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or a mortgage lender or mortgage servicer.

(j) “License” means a license issued under this act.

(k) “Licensee” means a person licensed or required to be licensed under this act.

(l) “Mortgage broker” means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans.

(m) “Mortgage lender” means a person who, directly or indirectly, makes or offers to make mortgage loans.

(n) “Mortgage loan” means a loan secured by a first mortgage on real property located in this state and used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families or a land contract covering real property located in this state used, or improved to be used, as a dwelling and designed for occupancy by 4 or fewer families. A mortgage loan does not include a home improvement installment contract under the home improvement finance act, 1965 PA 332, MCL 445.1101 to 445.1431.

(o) “Mortgage servicer” means a person who, directly or indirectly, services or offers to service mortgage loans.

(p) “Person” means an individual, corporation, partnership, association, governmental entity, or any other legal entity.

(q) “Real estate broker” means a broker or associate broker licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(r) “Real estate salesperson” means a salesperson licensed under article 25 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518.

(s) “Register” means filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a mortgage broker, mortgage lender, or mortgage servicer in this state and the payment of any fees required under this act, along with the other documents, proofs, and fees required by the commissioner.

(t) “Registrant” means a person registered or required to be registered under this act.

(u) “Service” means the collection or remittance, or the right or obligation to collect or remit, for a lender, noteowner, noteholder, mortgage servicer, or the licensee’s or registrant’s own account of 4 or more installment payments of the principal, interest, or an amount

placed in escrow under a mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

#### **445.1661 Powers of commissioner generally.**

Sec. 11. (1) The commissioner shall exercise general supervision and control over mortgage brokers, mortgage lenders, and mortgage servicers doing business in this state.

(2) In addition to the other powers granted to the commissioner by this act, the commissioner shall have all of the following powers:

(a) To promulgate reasonable rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, as necessary to implement and administer this act.

(b) To deny an application for a license.

(c) To conduct examinations and investigations of any person as necessary for the efficient enforcement of this act and the rules promulgated under this act.

(d) To advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating this act. The attorney general or prosecuting attorney may take appropriate legal action to enjoin the operation of the business or prosecute violations of this act.

(e) To bring an action in the Ingham county circuit court in the name and on behalf of this state against the licensee, registrant, or any other person who is participating in, or about to participate in, any unsafe or injurious practice or act in violation of this act or a rule promulgated under this act, to enjoin the person from participating in or continuing the practice or engaging in the act.

(f) To order a person to cease and desist from a violation of this act or a rule promulgated under this act in accordance with section 16.

(g) To suspend or revoke a license or registration in accordance with section 29.

(h) To require that restitution be made in accordance with section 29.

(i) To assess a civil fine in accordance with section 29.

(j) To censure a licensee or registrant.

(k) To issue an order to prohibit a person from being employed by, an agent of, or control person of a licensee or registrant as provided under section 18a.

#### **445.1668a Fraud; prohibition; notice; hearing; order.**

Sec. 18a. (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 or registrant 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 or registrant 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 or registrant 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 applicants for mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. 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 or registrant and from being employed by, an agent of, or control person of any licensee or registrant 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 or registrant of which the person subject to the notice or order is an employee, agent, or control person.

#### **445.1668b Hearing; final decision; judicial review; effect of review on order.**

Sec. 18b. (1) A hearing under section 16 or 18a 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 16 or 18a 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.

**445.1668c Enforcement of order; jurisdiction.**

Sec. 18c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 15, 16, or 18a.

**445.1668d Violation as misdemeanor; penalty.**

Sec. 18d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 18a 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.

**445.1668e Violation of order; exceptions.**

Sec. 18e. A control person who is subject to an order issued under section 18a 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 or registrant 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 or registrant to an unrelated third party.

**445.1672 Violations generally.**

Sec. 22. It is a violation of this act for a licensee or registrant to do any of the following:

(a) Fail to conduct the business in accordance with law, this act, or a rule promulgated or order issued under this act.

(b) Engage in fraud, deceit, or material misrepresentation in connection with any transaction governed by this act.

(c) Intentionally or due to gross or wanton negligence, repeatedly fail to provide borrowers material disclosures of information as required by law.

(d) Suppress or withhold from the commissioner any information that the licensee or registrant possesses and that, if submitted, would have made the licensee or registrant ineligible for licensing or registration under this act or would have warranted the commissioner's denial of a license application or refusal to accept a registration.

(e) Fail to comply with 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(f) Until proper disbursement is made, fail to place in a trust or escrow account held by a federally insured depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by the licensee that the borrower is obligated to pay to a third party, including amounts paid to the holder of the mortgage loan, amounts for property taxes and insurance premiums, or amounts paid under an agreement that requires if the mortgage loan is not closed the amounts paid shall be refunded to the prospective borrower or if the mortgage loan is closed the amounts paid shall be applied to fees and costs incurred at the time the mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the mortgage loan application, to obtain an appraisal, or to receive a credit report.

(g) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner under this act.

(h) To be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(i) Refuse or fail to pay, within a reasonable time, those expenses assessed to the licensee or registrant under this act.

(j) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(k) Fail to make a mortgage loan in accordance with a written commitment to make a mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment before the expiration of the commitment.

(l) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a mortgage loan application.

(m) Take a security interest in real property before closing the mortgage loan to secure payment of fees assessed in connection with a mortgage loan application.

(n) Except as provided under section 18e, 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 or registrant.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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## [No. 392]

### (SB 778)

AN ACT to amend 1981 PA 125, entitled "An act to regulate secondary mortgage loans; to prescribe powers and duties of certain state agencies and officials; to require certain fees; to provide for the establishment of a revolving fund; to provide for the promulgation of rules; and to prescribe civil fines and penalties," by amending sections 1, 6b, and 24 (MCL 493.51, 493.56b, and 493.74), sections 1 and 24 as amended and section 6b as added by 1997 PA 91, and by adding sections 14a, 14b, 14c, 14d, and 14e.

*The People of the State of Michigan enact:*

#### **493.51 Short title; definitions.**

Sec. 1. (1) This act shall be known and may be cited as "the secondary mortgage loan act".

(2) As used in this act:

(a) "Broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person attempting to obtain a secondary mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make a secondary mortgage loan.

(b) “Commissioner” means the commissioner of the office of financial and insurance services of the department of consumer and industry services and any authorized representatives of the commissioner.

(c) “Control person” means a director or executive officer of a licensee or registrant 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 or registrant.

(d) “Depository financial institution” means a state or nationally chartered bank, state or federal chartered savings and loan association, savings bank, or credit union, or any other institution whose deposits are insured by an agency of the federal government.

(e) “Exclusive broker” means a person that brokers secondary mortgage loans solely to 1 licensee or registrant, is compensated solely by that licensee or registrant, and is indemnified by the licensee or registrant as provided in section 6. The actions or practices of an exclusive broker in brokering a secondary mortgage loan are the actions or practices of the licensee or registrant.

(f) “Executive officer” means an officer, member, or partner of a licensee or registrant, including chief executive officer, president, vice president, chief financial officer, controller, compliance officer, or any other similar position.

(g) “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.

(h) “Lender” means a person who, directly or indirectly, makes or offers to make secondary mortgage loans.

(i) “Licensee” means a person licensed or required to be licensed under this act. A licensee does not include a depository financial institution.

(j) “Loan servicing customer” means a mortgagor whose secondary mortgage loan is being serviced by a servicer.

(k) “Open-end credit” means credit extended under a plan in which both of the following apply:

(i) The licensee or registrant reasonably contemplates repeated transactions.

(ii) The amount of credit that may be extended to the borrower during the term of the plan is generally made available to the extent that any part of the outstanding balance is repaid.

(l) “Person” means an individual, corporation, partnership, association, or other legal entity.

(m) “Registrant” means a person registered or required to be registered under this act. A registrant does not include a depository financial institution.

(n) “Secondary mortgage loan” means a loan that is not to be repaid within 90 days, that is made to a person for personal, family, or household purposes, and that is secured by a mortgage upon an interest in real property used as a dwelling if the property is subject to a lien of 1 or more prior mortgages. The loan may be secured by other collateral in addition to real property. Notwithstanding the place of execution, nominal or real, of a secondary mortgage loan, if the real property that secures the loan is located in this state, the secondary mortgage loan is subject to this act and all other applicable laws of this state.

(o) “Service” means the collection or remittance for a lender, noteowner, noteholder, or the licensee’s own account of 4 or more installment payments of the principal, interest,

or an amount placed in escrow under a secondary mortgage loan, mortgage servicing agreement, or an agreement with the mortgagor.

(p) “Servicer” means a person who, directly or indirectly, services or offers to service secondary mortgage loans.

#### **493.56b Powers of commissioner.**

Sec. 6b. (1) The commissioner shall exercise general supervision and control over brokers, lenders, and servicers doing business in this state.

(2) In addition to the other powers granted by this act, the commissioner may do any of the following:

- (a) Deny an application for a license or registration.
- (b) Conduct examinations and investigations of any person, as necessary to enforce this act and the rules promulgated under this act.
- (c) Investigate complaints filed against licensees or registrants.
- (d) Advise the attorney general or the prosecuting attorney of the county in which the business is conducted that the commissioner believes a licensee, registrant, or person is violating this act. The attorney general or prosecuting attorney shall bring a legal action to enjoin the operation of the business or prosecute violations of this act.
- (e) Bring an action in the Ingham county circuit court to enjoin a person from participating in, continuing to practice, or from engaging in a practice that is an unsafe or injurious practice or that violates this act or a rule promulgated under this act.
- (f) Order a person to cease and desist from a violation of this act or a rule promulgated under this act as provided under section 14.
- (g) Suspend, revoke, or refuse to issue a license or registration as provided under section 11.
- (h) Assess a civil fine as provided under section 27.
- (i) Appoint a conservator as provided under section 12a.
- (j) Issue an order to prohibit a person from being employed by, an agent of, or control person of, a licensee or registrant as provided under section 14a.
- (k) Censure a licensee or registrant.

(3) In the conduct of any examination or investigation under this act, the commissioner may do any of the following:

- (a) Issue a subpoena as provided under section 15.
- (b) Administer oaths as provided under section 15.
- (c) Interrogate a person under oath concerning the business and conduct of affairs of a person subject to this act, and require the production of books, records, or papers relative to the inquiry.
- (d) Have free access during regular business hours to the offices, places of business, or other location where the licensee, registrant, or an affiliate of a licensee or registrant, maintains business-related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee or registrant. The information obtained during the examination or investigation is exempt from the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be available for public inspection or copying or divulged to any person except as follows:
  - (i) To the attorney general.

- (ii) To a regulatory agency.
- (iii) In connection with an enforcement action brought under this or another applicable act.
- (iv) To law enforcement officials.
- (v) To persons authorized by the Ingham county circuit court to receive the information.
- (e) Employ independent investigators to conduct a part or all of the investigation, in the case of an investigation other than an examination.

#### **493.64a Fraud.**

Sec. 14a. (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 or registrant 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 or registrant 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 or registrant 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 applicants for secondary mortgage loans, the commissioner may serve upon the person an order of suspension from being employed by, an agent of, or control person of any licensee or registrant. 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 or registrant and from being employed by, an agent of, or control person of any licensee or registrant 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 or registrant of which the person subject to the notice or order is an employee, agent, or control person.

#### **493.64b Hearing; final decision; judicial review; stay of commissioner's order.**

Sec. 14b. (1) A hearing under section 14 or 14a 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 14 or 14a 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.

#### **493.64c Enforcement of order; jurisdiction.**

Sec. 14c. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 8, 14, or 14a.

#### **493.64d Violation as misdemeanor; penalty.**

Sec. 14d. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 14a 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.

#### **493.64e Violation of order; exceptions.**

Sec. 14e. A control person who is subject to an order issued under section 14a 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 or registrant 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 or registrant to an unrelated third party.

#### **493.74 Licensee or registrant; prohibited conduct.**

Sec. 24. (1) A licensee or registrant shall not transfer or assign a secondary mortgage loan or a security directly representing an interest in 1 or more secondary mortgage loans before the disbursement of 75% or more of the proceeds of the secondary mortgage loan to, or for the benefit of, the borrower. This subsection shall not apply to any of the following:

(a) A land contract not considered to be an equitable secondary mortgage.

(b) A loan made under a state or federal government program that allows the lender to escrow more than 25% of the proceeds for a limited period of time.



(c) A construction loan.

(d) A secondary mortgage loan that provides in writing that the loan proceeds shall be disbursed to or for the benefit of the borrower in installments or upon the request of the borrower or upon the completion of renovations or repairs to the dwelling situated on the real property subject to the secondary mortgage loan.

(2) It is a violation of this act for a licensee or registrant to do any of the following:

(a) Suppress or withhold from the commissioner any information that the licensee or registrant possesses that would make the licensee or registrant ineligible for licensing or registration under this act or would warrant the commissioner's denial of a license or registration application.

(b) Violate any provisions of 1966 PA 125, MCL 565.161 to 565.164, regulating the handling of mortgage escrow accounts by mortgagees.

(c) Until proper disbursement is made, fail to place in a trust or escrow account held by a depository financial institution in a manner approved by the commissioner any money, funds, deposits, checks, drafts, or other negotiable instruments received by a broker, lender, or servicer that is the portion of a payment on a secondary mortgage loan that the person is obligated to pay to a third party. The deposits shall include amounts paid to the holder of the secondary mortgage loan, amounts for property taxes and insurance premiums, and amounts paid under an agreement that requires, if the secondary mortgage loan is not closed, the amounts paid shall be refunded to the prospective borrower, or if the secondary mortgage loan is closed, the amounts paid shall be applied to fees and costs incurred at the time the secondary mortgage loan is closed. Fees and costs include, but are not limited to, title insurance premiums and recording fees. Fees and costs do not include amounts paid to cover costs incurred to process the secondary mortgage loan application, to obtain an appraisal, or to receive a credit report.

(d) Refuse to permit an examination or investigation by the commissioner of the books and affairs of the licensee or registrant, or refuse or fail, within a reasonable time, to furnish any information or make a report that may be required by the commissioner under this act.

(e) Be convicted of a felony, or any misdemeanor of which an essential element is fraud.

(f) Refuse or fail to pay within a reasonable time expenses assessed under this act.

(g) Fail to make restitution after having been ordered to do so by the commissioner or an administrative agency, or fail to make restitution or pay damages to persons injured by the licensee's or registrant's business transactions after having been ordered to do so by a court.

(h) Fail to make a secondary mortgage loan pursuant to, and in accordance with, a written commitment to make a secondary mortgage loan issued to, and accepted by, a person when the person has timely and completely satisfied all the conditions of the commitment prior to the expiration of the commitment.

(i) Require a prospective borrower to deal exclusively with the licensee or registrant in regard to a secondary mortgage loan application.

(j) Take a security interest in real property before closing the secondary mortgage loan to secure payment of fees assessed in connection with a secondary mortgage loan application.

(k) Except as otherwise provided under section 14e, 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 or registrant.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 393]**

**(SB 779)**

AN ACT to amend 1939 PA 21, entitled “An act to define and regulate the business of making regulatory loans; to permit the licensing of persons engaged in that business; to provide for the administration of this act and for the promulgation of rules; and to prescribe penalties,” by amending sections 1 and 12 (MCL 493.1 and 493.12), as amended by 2001 PA 270, and by adding sections 9a, 9b, 9c, 9d, 9e, 9f, and 9g.

*The People of the State of Michigan enact:*

**493.1 Short title; definitions.**

Sec. 1. (1) This act shall be known and may be cited as the “regulatory loan act”.

(2) As used in this act:

(a) “Advertising” means publishing or broadcasting, or causing to be published or broadcast, material that has been prepared for public distribution by means of newspapers, magazines, or electronic media. Advertising does not include a stockholder communication, such as an annual report, interim financial report, registration statement, security, prospectus, application for listing a security on a stock exchange, or proxy materials. Advertising does not include a communication addressed to a person who has previously executed a loan agreement relative to that person’s account.

(b) “Assets” means liquid assets, collectible loans made in accordance with this act, and personal property acquired in the general conduct of business transacted under this act.

(c) “Commissioner” means the commissioner of the office of financial and insurance services in the department of consumer and industry services.

(d) “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.

(e) “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.

(f) “Financial licensing act” means any act listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052.

(g) “License” means a single license issued to a single place of business.

(h) “Licensee” means a person licensed or required to be licensed under this act.

(i) “Liquid assets” means cash, unrestricted deposits in banks, and readily marketable securities at their then market value.

(j) “Loan” or “regulatory loan” means a loan made by a licensee to an individual for personal, family, or household use.

(k) “Person” means an individual, partnership, association, corporation, limited liability company, or other legal entity.

**493.9a Cease and desist order; grounds; notice; failure to appear at hearing; findings; effective date and duration of order.**

Sec. 9a. (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 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 control persons 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.

**493.9b Investigation or examination by commissioner; complaint or action; suspension of license; request for hearing; duration of suspension.**

Sec. 9b. (1) As provided in section 10, 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 9c, 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.

**493.9c Fraud.**

Sec. 9c. (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 applicants for loans, mortgage loans, secondary mortgage loans, credit card arrangements, or installment sales credit, borrowers on loans, obligors on installment sale contracts, loan servicing customers, purchasers of mortgage loans or interests in mortgage loans, or 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.

**493.9d Hearing; decision; findings; judicial review; stay.**

Sec. 9d. (1) A hearing under sections 9, 9a, and 9c 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 sections 9, 9a, and 9c 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.

#### **493.9e Enforcement of order; jurisdiction.**

Sec. 9e. The commissioner may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under section 9, 9a, 9b, or 9c.

#### **493.9f Violation as misdemeanor; penalty.**

Sec. 9f. Any current or former executive officer, director, agent, or control person who violates a final order issued under section 9c 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.

#### **493.9g Violation of order; exceptions.**

Sec. 9g. A control person who is subject to an order issued under section 9c 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.

#### **493.12 Statements or representations by licensee; lien on real estate; confession of judgment or power of attorney prohibited; note or evidence of indebtedness; blanks; discrimination on basis of sex or marital status prohibited.**

Sec. 12. (1) A licensee or other person shall not advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever a false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action.

(2) A licensee shall not take a lien upon real estate as security for a loan made under this act, except a lien acquired by execution or otherwise after the entry of a judgment.

(3) A licensee shall not take a confession of judgment or a power of attorney to appear or to confess judgment on behalf of a borrower. A licensee shall not take a note or evidence of indebtedness that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, or an instrument in which blanks are left to be filled in after execution.

(4) A licensee shall not discriminate against a person in the extension of credit on the basis of sex or marital status.

(5) Except as provided under section 9g, 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.

This act is ordered to take immediate effect.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 394]****(SB 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:*

**487.902 Definitions.**

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.

**487.912 License; denial, suspension, or revocation; notice; hearing; appeal; investigations and hearings; subpoena of evidence; oaths and affirmations; noncompliance with subpoena or failure to testify; order.**

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.

#### **487.912b Cease and desist order.**

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.

#### **487.912c Suspension or revocation of 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.

#### **487.912d Fraud.**

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.

**487.912e Hearing; final decision; judicial review; stay of commissioner's order.**

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.

**487.912f Enforcement.**

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.

**487.912g Violation as misdemeanor.**

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.

**487.912h Violation of order; exceptions.**

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.

**487.915 Violation of act as misdemeanor; penalty; separate offense.**

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.

Approved May 29, 2002.

Filed with Secretary of State May 30, 2002.

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**[No. 395]**

**(HB 5850)**

AN ACT to amend 1987 PA 230, entitled “An act to authorize certain local governmental units to incorporate municipal health facilities corporations and subsidiary municipal health facilities corporations for establishing, modifying, operating, and managing health services and acquiring, constructing, adding to, repairing, remodeling, renovating, equipping, and re-equipping hospitals and other health care facilities and related purposes; to provide for the application of this act to existing municipal hospitals and for the transfer of ownership of hospital funds and personal property; to validate and ratify the existence, organization, actions, proceedings, and board membership of existing organizations acting as county public hospitals; to provide for the appointment of trustees; to grant certain powers of a public body corporate to health facilities corporations and subsidiary health facilities corporations; to empower certain local governmental units to encumber property for the benefit of, transfer or make property available to, issue bonds to construct facilities to be used by, appropriate funds for, and levy a tax for, municipal health facilities corporations and subsidiary municipal health facilities corporations; to empower certain local governmental units to guarantee obligations of municipal health facilities corporations and subsidiary municipal health facilities corporations and to permit certain local governmental units to pledge their full faith and credit to pay such guaranties; to provide for transfer of ownership or operation of health care facilities and health services to nonprofit health care organizations; to authorize municipal health facilities corporations and subsidiary municipal health facilities corporations to borrow money and issue notes for the purposes of meeting expenses of operation and to issue corporation obligations for the purpose of acquisition, construction, repair, remodeling, equipping or re-equipping of health care facilities and for the refinancing, refunding, or refunding in advance of indebtedness of the municipal health facilities corporations or the subsidiary municipal health facilities corporations or of indebtedness of certain local governmental units undertaken on their behalf; to authorize municipal health facilities corporations and subsidiary municipal health facilities corporations to enter into mortgages, deeds of trust, and other agreements for security which may include provisions for the appointment of receivers; to exempt obligations and property of municipal health facilities corporations and subsidiary municipal health facilities corporations from taxation; and to provide other rights, powers, and duties of municipal health facilities corporations and subsidiary municipal health facilities corporations,” by amending sections 401, 406, and 412 (MCL 331.1401, 331.1406, and 331.1412), as amended by 1988 PA 502.

*The People of the State of Michigan enact:*

**331.1401 Board of trustees or subsidiary board; power to borrow money and issue notes; resolution; applicability of revised municipal finance act.**

Sec. 401. (1) A board of trustees or subsidiary board may borrow money and issue notes, which shall mature not more than 18 months from the date of their issuance, for the