

DEPARTMENT OF BANKING CODE - CONFLICTS OF INTEREST AND PENALTY,
REORGANIZING THE DEPARTMENT OF BANKING AND THE PENNSYLVANIA
SECURITIES COMMISSION AND RELATED REPEALS

Act of Jul. 2, 2012, P.L. 814, No. 86

Cl. 07

Session of 2012

No. 2012-86

HB 2438

AN ACT

Amending the act of May 15, 1933 (P.L.565, No.111), entitled "An act relating to the powers and duties of the Department of Banking and the Secretary of Banking in exercising supervision over, and taking possession of and conducting or liquidating the business and property of, corporations, associations, and persons receiving deposits or otherwise transacting a banking business, corporations acting as fiduciaries, and building and loan associations; providing for the payment of the expenses of the Department of Banking by supervised corporations, associations, or persons, and appropriating the Banking Department Fund; authorizing the Department of Banking, under certain circumstances, to examine corporations, associations, or persons affiliated, or having business transactions with supervised corporations, associations or persons; authorizing appeals to the Supreme Court, and prescribing and limiting the powers and duties of certain other courts and their prothonotaries, registers of wills, recorders of deeds, and certain State departments, commissions, and officers; authorizing certain local public officers and State departments to collect fees for services rendered under this act; providing penalties; and repealing certain acts and parts of acts," amending the title of the act; further providing for conflicts of interest and penalty; reorganizing the Department of Banking and the Pennsylvania Securities Commission; and making related repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking Code, is amended to read:

AN ACT

Relating to the powers and duties of the Department of Banking **and Securities** and the Secretary of Banking **and Securities** in exercising supervision over, and taking possession of and conducting or liquidating the business and property of, corporations, associations, and persons receiving deposits or otherwise transacting a banking business, corporations acting as fiduciaries, and building and loan associations; providing for the payment of the expenses of the Department of Banking by supervised corporations, associations, or persons, and appropriating the Banking Department Fund; authorizing the Department of Banking, under certain circumstances, to examine corporations, associations, or persons affiliated, or having business transactions with supervised corporations, associations or persons; authorizing appeals to the Supreme Court, and prescribing and limiting the powers and duties of certain other courts and their prothonotaries, registers of wills, recorders of deeds, and

certain State departments, commissions, and officers; authorizing certain local public officers and State departments to collect fees for services rendered under this act; **regulating securities**; providing penalties; and repealing certain acts and parts of acts.

Section 2. Section 1 of the act is amended to read:

Section 1. Short title.--This act shall be known, and may be cited, as the "Department of Banking **and Securities** Code."

Section 3. The definitions of "department," "secretary," "licensee" and "institution" in subsection A of section 2 of the act, amended December 9, 2002 (P.L.1604, No.209) and June 29, 2009 (P.L.46, No.7), are amended and the section is amended by adding definitions to read:

Section 2. Definitions.--A. The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise:

"Department." The Department of Banking **and Securities** of this Commonwealth.

"Secretary." The Secretary of Banking **and Securities** of this Commonwealth, or his duly authorized deputy or representative.

* * *

"Licensee." A corporation, person or any other type of business entity required to be licensed by, registered with or partially exempt from being licensed by the Department of Banking **and Securities** under any law of this Commonwealth administered by the Department of Banking **and Securities**. **The term does not include a licensee or registrant under the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," unless otherwise provided in this act.**

* * *

"Institution." A corporation or a person, as defined in this section, or other type of business entity, including, but not limited to, a mutual holding company, which is or was subject to the supervision of the department. The term does not include credit unions or licensees unless specifically stated otherwise **and does not include a licensee or registrant under the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," unless otherwise provided in this act.**

* * *

"Association." As defined in section 102(3) of the act of December 14, 1967 (P.L.746, No.345), known as the "Savings Association Code of 1967."

"Commission." The Banking and Securities Commission of the department established in section 1121-A(a).

"Fund." The Banking Fund redesignated in section 1113-A as a continuation of the Banking Department Fund.

Section 4. The act is amended by adding a section to read:

Section 17. Act not Applicable to Securities Licensees and Registrants.--Unless otherwise expressly provided, this act shall not apply to and shall not affect the act of May 5, 1921 (P.L.374, No.176), referred to as the Investment Business Licensing Law, the act of December 5, 1972 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of 1972," or the act of March 3, 1976 (P.L.42, No.19), known as the "Takeover Disclosure Law."

Section 5. Section 303 of the act, amended December 9, 2002 (P.L.1604, No.209), is repealed:

[Section 303. Conflicts of Interest; Penalty.--A. For purposes of this section, "institution" shall include a licensee or credit union. The term includes credit unions unless specifically stated otherwise.

B. Except as provided in subsection E, neither the secretary, nor any officer or employe of the department, nor any deputy receiver or employe of the secretary, as receiver, shall receive any sum of money or any property as a gift or loan or otherwise, directly or indirectly from any institution or from any officer, director or employe thereof. This subsection shall not apply to loans to employes of the department who function in a clerical or nondecision making capacity with regard to institutions, including, but not limited to, clerks, typists and stenographers.

C. Neither the secretary, nor any officer or employe of the department, nor any deputy receiver or employe of the secretary, as receiver, shall hold any office or position in, have any direct or indirect pecuniary interest in, or direct or indirectly own shares or securities issued by an institution, except that the secretary or any department employe or officer may continue to own shares or securities issued by an institution other than a credit union which are owned by the secretary on the date of his appointment, or by other department employes on the date of commencement of employment with the department, and all shares or securities distributed by the institution and received by any of them on account of the shares or securities so owned subject to the penalty provisions of this section. All department employes subject to this subsection shall provide the department with written notice of his or her ownership of any such shares or securities prior to or upon his or her commencement of employment with the department. Notwithstanding the foregoing, the department may impose terms on the employe or officer, including, but not necessarily limited to, requiring the employe or officer to place into a blind trust, sell or divest of such shares or securities as a condition of obtaining or continuing employment with the department, provided such sale or divestment is deemed to be reasonably necessary under the circumstances, or to recuse himself or herself from being involved in any department decision that pertains solely to the institution of which he or she owns shares or securities.

D. In the event of such ownership of shares or securities by the secretary, he shall disclose the ownership, amount and date of acquisition of such shares or securities in writing to the Secretary of the Commonwealth immediately after his appointment and shall not during his term of office participate in any decision or take any action concerning an institution in which he owns such shares or securities other than actions or decisions generally applicable to institutions or classes of institutions. In the event of disqualification of the secretary from participation in any decision or action for such reason, all authority vested in him or her by law shall, for the purpose of such decision or action, be exercised by the appropriate deputy secretary in accordance with their jurisdictional responsibilities.

E. The prohibitions of subsections B and C shall not apply to:

(1) A first lien mortgage loan upon the home of the secretary or other employe of the department, or an indirect motor vehicle loan originated under the act of June 28, 1947 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance Act," in any and all such mortgage loans or indirect motor

vehicle loans which may be originated by an institution other than a credit union, where such loan is granted upon the same terms and in the same manner as provided by law for mortgage loans or indirect motor vehicle loans granted by such institutions. All persons subject to this subsection shall provide the department with written notice of any loan referenced in this subsection and its terms within thirty days of receiving the loan. Notwithstanding the foregoing, the department may impose terms on the employe or officer, including, but not necessarily limited to, requiring such person to recuse himself or herself from being involved in any department decision that pertains solely to the institution from which he or she received a loan.

(2) A deposit account with an institution other than a credit union, provided that such account shall not be intentionally overdrawn and the secretary, department employe or officer does not participate in any vote as a shareholder or member of such institution.

F. A violation of the prohibitions of this section by the secretary, an officer or employe of the department, a deputy receiver or an employe of the secretary as receiver shall constitute sufficient ground for removal from office. In addition, any such person who willfully or knowingly commits such violation shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for a period not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000.00), or both; and shall be subject to a further fine equal to the amount of money or value of the property which such individual has directly or indirectly received in violation of this section.]

Section 6. The act is amended by adding an article to read:

**ARTICLE XI-A
BANKING AND SECURITIES**

**SUBARTICLE A
PRELIMINARY PROVISIONS**

Section 1101-A. Scope of article.

This article relates to the regulation of banking and securities.

Section 1102-A. Purpose of article.

The purpose of this article is to consolidate regulation of banking and securities under the department.

**SUBARTICLE B
ADMINISTRATION**

Section 1111-A. Agency.

The department shall regulate banking and securities.

Section 1112-A. Continuation.

(a) **Functions.**--The department shall assume functions under subsection (b). A securities division is established as a division of the department to perform the functions transferred to the department under subsection (b). The secretary shall appoint a deputy secretary to oversee the administration of these functions.

(b) **Transfers.**--The following functions of the Pennsylvania Securities Commission are transferred to the department:

(1) Administration of the act of May 5, 1921 (P.L.374, No.176), referred to as the Investment Business Licensing Law.

(2) Imposition of fees under section 615-A of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(3) Administration of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

(4) Administration of the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law. Section 1113-A. Fund.

(a) Continuation.--The Banking Department Fund is redesignated as the Banking Fund.

(b) Sources.--The sources of the fund are as follows:

(1) Money collected or received by the department arising from:

(i) fees, assessments, charges and penalties relating to the regulation of associations, credit unions, institutions and licensees;

(ii) the sale by the Department of General Services of unserviceable property originally paid for out of the fund; and

(iii) similar sources.

(2) The sources of the fund shall not include fees, assessments, charges and penalties generated from:

(i) the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972; or

(ii) the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law.

(c) Use.--The fund shall be used by the department to pay its expenses, including the following:

(1) Salaries of the secretary, the deputies, the examiners, the other employees of the department and attorneys.

(2) Rental and other expenses for offices, rooms, garage space and other accommodations, regardless of the municipality in which they are located, occupied by the department. This paragraph excludes offices, rooms, garage space and accommodations in the Capitol Complex.

(3) Premiums for workers' compensation insurance covering the officers and employees of the department.

(4) Premiums for surety bonds for officers and employees of the department required by law to furnish the bonds.

(5) Furniture, stationery, materials, supplies and overhead expenses of the department.

(d) Department of General Services.--Purchases and leases under subsection (c) shall be made through the Department of General Services, as agent. Contracts of insurance and surety bonds under subsection (c) shall be placed through the Department of General Services, as agent.

(e) Restrictions on appropriations.--

(1) For fiscal years beginning after June 30, 1995, and ending before July 1, 2012, the General Assembly shall appropriate funds as it determines to be necessary from the fund for use by the department or other Commonwealth agencies.

(2) For fiscal years beginning after June 30, 2012, the General Assembly shall appropriate the funds as it determines to be necessary from the fund for use only by the department and not for any other Commonwealth agency.

(f) Warrant.--Money in the fund appropriated to the department shall be paid out upon warrant of the State Treasurer drawn after requested by the secretary.

(g) Institution Resolution Account.--

(1) The Institution Resolution Account is established as a restricted account within the fund.

(2) The sources of the account are as follows:

(i) An amount determined by the secretary each fiscal year based upon economic and regulatory conditions from assessments, fees and administrative penalties generated from statutes administered by the department other than:

- (A) the Pennsylvania Securities Act of 1972; or
- (B) the Takeover Disclosure Law.

(ii) Amounts received from court litigation involving the department.

(3) The secretary may use the money in the account to pay for costs associated with any of the following:

(i) Resolution of an institution or an association, under Article X. Money under this subparagraph may be used in lieu of paying expenses from the assets of an institution or association under section 1006.

(ii) Seizure and liquidation of a credit union under 17 Pa.C.S. § 503 (relating to regulation by department).
Section 1114-A. Conflicts of interest.

Appointed officials and employees of the department shall only be subject to:

- (1) section 605 of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972; and
- (2) statutes, regulations and statements of policy, generally governing the ethical conduct of appointed officials and State employees in regard to conflicts of interest and other ethics issues.

SUBARTICLE C COMMISSION

Section 1121-A. Organization.

(a) Establishment.--The Banking and Securities Commission is established within the department.

(b) Composition.--The commission shall consist of the following commissioners:

- (1) The secretary, who may be represented by a designee.
- (2) A designee of the Governor.
- (3) Three individuals appointed by the Governor with the advice and consent of a majority of the members of the Senate.

(c) Terms.--

- (1) The secretary shall serve ex officio.
- (2) A commissioner under subsection (b) (2) or (3) shall serve at the pleasure of the Governor and until a successor is appointed and qualified.

(d) Officers.--The Governor shall designate a commissioner under subsection (b) (3) as chair. The secretary or the secretary's designee shall serve as the vice chair.

(e) Meetings.--The commission shall convene:

- (1) on a schedule determined by the secretary; but
- (2) at least every three months.

(f) Quorum.--A majority of serving commissioners constitutes a quorum. Action taken at a meeting at which a quorum is present shall be the lawful act of the commission for all purposes.

(g) Compensation and expenses.--

(1) A commissioner under subsection (b) (1) or (2) shall not receive an additional salary in compensation for membership on the commission.

(2) A commissioner under subsection (b) (3) shall receive an annual salary of \$36,000, subject to annual cost-of-living increases under section 3(e) of the act of September 30, 1983 (P.L.160, No.39), known as the Public Official Compensation Law.

(3) All commissioners shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties in accordance with 4 Pa. Code Ch. 40 (relating to travel and subsistence).

Section 1122-A. Powers and duties.

The commission has the following powers and duties:

(1) Be the final adjudicator of every administrative proceeding which requires the appointment of a hearing officer and which is instituted by the department under any law administered by the department. An action under this paragraph is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

(2) Perform functions authorized by the secretary.

SUBARTICLE D

TRANSITIONAL PROVISIONS

Section 1131-A. Transition and implementation.

In order to facilitate the reorganization under this article, all of the following shall occur:

(1) Reorganization. The following shall apply:

(i) The secretary shall review and assess the Pennsylvania Securities Commission's organizational structure for an October 1, 2012, reorganization under this article. This subparagraph includes personnel and staffing, budgetary needs and considerations, operations, and statutory and regulatory enforcement requirements, for the purpose of determining the organizational structure and staffing.

(ii) In accordance with the review and assessment under subparagraph (i), by August 31, 2012, the secretary shall submit a reorganization plan to carry out the reorganization under this article to the Executive Board for approval under section 709(b) and (h) of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(iii) If the Executive Board approves the reorganization plan under subparagraph (ii), the plan shall take effect September 28, 2012.

(2) Personnel actions. Notwithstanding the reorganization plan required under paragraph (1)(iii), after June 30, 2012, no member of the Pennsylvania Securities Commission or Pennsylvania Securities Commission personnel shall hire new staff or promote or terminate existing staff without the approval of the secretary.

(3) Budgeting and procurement. After June 30, 2012, and before October 1, 2012, without the approval of the secretary, the Pennsylvania Securities Commission may not:

- (i) expend funds, other than for payroll; or
- (ii) procure goods and services.

SUBARTICLE E

MISCELLANEOUS PROVISIONS

Section 1141-A. References.

In statutes, regulations and orders, a reference to the Pennsylvania Securities Commission shall be deemed a reference to the department.

Section 7. Repeals are as follows:

(1) The General Assembly declares as follows:

(i) The repeal under paragraph (2)(i) is necessary to effectuate the addition of section 1113-A of the act.

(ii) The repeal under paragraph (2)(ii) is necessary to effectuate section 1121-A(g)(2) of the act.

(iii) The repeal under paragraph (2)(iii) is necessary to effectuate the addition of section 1121-A of the act.

(2) The following acts and parts of acts are repealed:

(i) Section 1605 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(ii) Section 601.1 of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

(iii) As much of the definition of "independent agency" in section 102 of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, as refers to the Pennsylvania Securities Commission.

(3) The following parts of acts are repealed insofar as they are inconsistent with this act:

(i) Section 209 of the act of June 7, 1923 (P.L.498, No.274), known as The Administrative Code.

(ii) Section 206 and Article XXVIII-B of The Administrative Code of 1929.

(iii) Section 601 of the Pennsylvania Securities Act of 1972.

(iv) Section 201 of the Commonwealth Attorneys Act. Section 8. Continuation is as follows:

(1) The addition of section 1112-A(b)(3) of the act effectively continues the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972 and the act of March 3, 1976 (P.L.42, No.19), known as the Takeover Disclosure Law. The following apply:

(i) Except as otherwise provided in the act, all activities initiated under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law shall continue and remain in full force and effect and may be completed under section 1112-A(b)(3) of the act.

(ii) Resolutions, orders, regulations, rules and decisions which were made under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law and which are in effect on October 1, 2012, shall remain in full force and effect until revoked, vacated or modified under section 1112-A(b)(3) of the act.

(iii) Contracts, obligations and agreements entered into under the Pennsylvania Securities Act of 1972 and the Takeover Disclosure Law are not affected nor impaired by the transfer under section 1112-A(b)(3) of the act.

(2) (Reserved).

Section 9. This act shall take effect as follows:

(1) The following provisions shall take effect July 1, 2012, or immediately, whichever is later:

(i) Section 7(1) of this act.

(ii) Section 8 of this act.

(iii) This section.

(2) The addition of Subarticles A and D of Article XI-A of the act shall take effect July 1, 2012, or immediately, whichever is later.

(3) The remainder of this act shall take effect October 1, 2012.

APPROVED--The 2nd day of July, A.D. 2012.

TOM CORBETT