

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2438 Session of 2012

INTRODUCED BY FLECK, HESS, DALEY, CALTAGIRONE, DeLUCA, GEIST, GINGRICH, GROVE, HARRIS, HELM, MILLARD, PICKETT, SAYLOR, SCAVELLO, SWANGER, VULAKOVICH AND WATSON, JUNE 5, 2012

REFERRED TO COMMITTEE ON COMMERCE, JUNE 5, 2012

AN ACT

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

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

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

1 read:

2 AN ACT

3 Relating to the powers and duties of the Department of Banking

4 and Securities and the Secretary of Banking and Securities in

5 exercising supervision over, and taking possession of and

6 conducting or liquidating the business and property of,

7 corporations, associations, and persons receiving deposits or

8 otherwise transacting a banking business, corporations acting

9 as fiduciaries, and building and loan associations; providing

10 for the payment of the expenses of the Department of Banking

11 by supervised corporations, associations, or persons, and

12 appropriating the Banking Department Fund; authorizing the

13 Department of Banking, under certain circumstances, to

14 examine corporations, associations, or persons affiliated, or

15 having business transactions with supervised corporations,

16 associations or persons; authorizing appeals to the Supreme

17 Court, and prescribing and limiting the powers and duties of

18 certain other courts and their prothonotaries, registers of

19 wills, recorders of deeds, and certain State departments,

20 commissions, and officers; authorizing certain local public

21 officers and State departments to collect fees for services

22 rendered under this act; regulating securities; providing

23 penalties; and repealing certain acts and parts of acts.

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

25 Section 1. Short title.--This act shall be known, and may be

26 cited, as the "Department of Banking and Securities Code."

27 Section 3. The definitions of "department," "secretary,"

28 "licensee" and "institution" in subsection A of section 2 of the

29 act, amended December 9, 2002 (P.L.1604, No.209) and June 29,

30 2009 (P.L.46, No.7), are amended and the section is amended by

1 adding definitions to read:

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

5 "Department." The Department of Banking and Securities of  
6 this Commonwealth.

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

9 \* \* \*

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

18 \* \* \*

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

27 \* \* \*

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

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

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

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

6 Section 17. Act not Applicable to Securities Licensees and  
7 Registrants.--Unless otherwise expressly provided, this act  
8 shall not apply to, and shall not affect, the act of act of May  
9 5, 1921 (P.L.374, No.176), referred to as the Investment  
10 Business Licensing Law, the act of December 5, 1972 (P.L.1280,  
11 No.284), known as the "Pennsylvania Securities Act of 1972," or  
12 the act of March 3, 1976 (P.L.42, No.19), known as the "Takeover  
13 Disclosure Law."

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

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

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

30 C. Neither the secretary, nor any officer or employe of the

1 department, nor any deputy receiver or employe of the secretary,  
2 as receiver, shall hold any office or position in, have any  
3 direct or indirect pecuniary interest in, or direct or  
4 indirectly own shares or securities issued by an institution,  
5 except that the secretary or any department employe or officer  
6 may continue to own shares or securities issued by an  
7 institution other than a credit union which are owned by the  
8 secretary on the date of his appointment, or by other department  
9 employes on the date of commencement of employment with the  
10 department, and all shares or securities distributed by the  
11 institution and received by any of them on account of the shares  
12 or securities so owned subject to the penalty provisions of this  
13 section. All department employes subject to this subsection  
14 shall provide the department with written notice of his or her  
15 ownership of any such shares or securities prior to or upon his  
16 or her commencement of employment with the department.  
17 Notwithstanding the foregoing, the department may impose terms  
18 on the employe or officer, including, but not necessarily  
19 limited to, requiring the employe or officer to place into a  
20 blind trust, sell or divest of such shares or securities as a  
21 condition of obtaining or continuing employment with the  
22 department, provided such sale or divestment is deemed to be  
23 reasonably necessary under the circumstances, or to recuse  
24 himself or herself from being involved in any department  
25 decision that pertains solely to the institution of which he or  
26 she owns shares or securities.

27 D. In the event of such ownership of shares or securities by  
28 the secretary, he shall disclose the ownership, amount and date  
29 of acquisition of such shares or securities in writing to the  
30 Secretary of the Commonwealth immediately after his appointment

1 and shall not during his term of office participate in any  
2 decision or take any action concerning an institution in which  
3 he owns such shares or securities other than actions or  
4 decisions generally applicable to institutions or classes of  
5 institutions. In the event of disqualification of the secretary  
6 from participation in any decision or action for such reason,  
7 all authority vested in him or her by law shall, for the purpose  
8 of such decision or action, be exercised by the appropriate  
9 deputy secretary in accordance with their jurisdictional  
10 responsibilities.

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

13 (1) A first lien mortgage loan upon the home of the  
14 secretary or other employe of the department, or an indirect  
15 motor vehicle loan originated under the act of June 28, 1947  
16 (P.L.1110, No.476), known as the "Motor Vehicle Sales Finance  
17 Act," in any and all such mortgage loans or indirect motor  
18 vehicle loans which may be originated by an institution other  
19 than a credit union, where such loan is granted upon the same  
20 terms and in the same manner as provided by law for mortgage  
21 loans or indirect motor vehicle loans granted by such  
22 institutions. All persons subject to this subsection shall  
23 provide the department with written notice of any loan  
24 referenced in this subsection and its terms within thirty days  
25 of receiving the loan. Notwithstanding the foregoing, the  
26 department may impose terms on the employe or officer,  
27 including, but not necessarily limited to, requiring such person  
28 to recuse himself or herself from being involved in any  
29 department decision that pertains solely to the institution from  
30 which he or she received a loan.

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

6 F. A violation of the prohibitions of this section by the  
7 secretary, an officer or employe of the department, a deputy  
8 receiver or an employe of the secretary as receiver shall  
9 constitute sufficient ground for removal from office. In  
10 addition, any such person who willfully or knowingly commits  
11 such violation shall be guilty of a misdemeanor and shall, upon  
12 conviction thereof, be subject to imprisonment for a period not  
13 exceeding one year, or a fine not exceeding one thousand dollars  
14 (\$1,000.00), or both; and shall be subject to a further fine  
15 equal to the amount of money or value of the property which such  
16 individual has directly or indirectly received in violation of  
17 this section.]

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

19 ARTICLE XI-A

20 BANKING AND SECURITIES

21 SUBARTICLE A

22 PRELIMINARY PROVISIONS

23 Section 1101-A. Scope.

24 This article relates to the regulation of banking and  
25 securities.

26 Section 1102-A. Purpose.

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

29 SUBARTICLE B

30 ADMINISTRATION

1 Section 1111-A. Agency.

2 The department shall regulate banking and securities.

3 Section 1112-A. Continuation.

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

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

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

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

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

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

23 Section 1113-A. Fund.

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

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

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

29 (i) fees, assessments, charges and penalties  
30 relating to the regulation of associations, credit



1 unions, institutions and licensees;

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

5 (iii) similar sources.

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

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

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

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

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

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

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

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

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

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

1 bonds under subsection (c) shall be placed through the  
2 Department of General Services, as agent.

3 (e) Restrictions on appropriations.--

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

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

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

16 (g) Institution Resolution Account.--

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

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

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

25 (A) the act of December 5, 1972 (P.L.1280,  
26 No.284), known as the Pennsylvania Securities Act of  
27 1972; or

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

30 (ii) Amounts received from court litigation

1 involving the department.

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

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

8 (ii) Seizure and liquidation of a credit union under  
9 17 Pa.C.S. § 503 (relating to regulation by department).

10 Section 1114-A. Conflicts of interest.

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

13 (1) section 605 of the act of December 5, 1972  
14 (P.L.1280, No.284), known as the Pennsylvania Securities Act  
15 of 1972; and

16 (2) statutes, regulations and statements of policy,  
17 generally governing the ethical conduct of appointed  
18 officials and State employees in regard to conflicts of  
19 interest and other ethics issues.

20 SUBARTICLE C

21 COMMISSION

22 Section 1121-A. Organization.

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

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

27 (1) The secretary, who may be represented by a designee.

28 (2) A designee of the Governor.

29 (3) Three individuals appointed by the Governor with the  
30 advice and consent of a majority of the members of the

1 Senate.

2 (c) Terms.--

3 (1) The secretary shall serve ex officio.

4 (2) A commissioner under subsection (b) (2) or (3) shall  
5 serve at the pleasure of the Governor and until a successor  
6 is appointed and qualified.

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

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

11 (1) on a schedule determined by the secretary; but

12 (2) at least every three months.

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

16 (g) Compensation and expenses.--

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

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

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

29 Section 1122-A. Powers and duties.

30 The commission has the following powers and duties:

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

9       (2) Perform functions authorized by the secretary.

10                               SUBARTICLE D

11                               TRANSITIONAL PROVISIONS

12 Section 1131-A. Transition and implementation.

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

15               (1) Reorganization. The following shall apply:

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

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

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

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

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

13               (i) expend funds, other than for payroll; or

14               (ii) procure goods and services.

15                               SUBARTICLE E

16                                       MISCELLANEOUS PROVISIONS

17          Section 1141-A. References.

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

21          Section 7. Repeals are as follows:

22               (1) The General Assembly declares as follows:

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

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

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

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

1 (i) Section 1605 of the act of April 9, 1929  
2 (P.L.177, No.175), known as The Administrative Code of  
3 1929.

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

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

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

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

15 (ii) Sections 206 and Article XXVIII-B of The  
16 Administrative Code of 1929.

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

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

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

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

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

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

11       (2) (Reserved).

12 Section 9. This act shall take effect as follows:

13       (1) The following provisions shall take effect July 1,  
14 2012, or immediately, whichever is later:

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

16           (ii) Section 8 of this act.

17           (iii) This section.

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

21       (3) The remainder of this act shall take effect October  
22 1, 2012.