PROTECTIVE COMMITTEES

Act 89 of 1933

AN ACT to prevent fraud, deception and imposition in the solicitation within the state of Michigan of the deposit of bonds, notes, debentures and other evidences of indebtedness under, and/or the consent of the holders or owners of such securities, to a protective committee agreement, and to prevent fraud, deception and imposition in the operations and activities of protective committees organized within the state of Michigan to act for and in behalf of the holders or owners of such securities, and for such purposes to create a commission to regulate and supervise the establishment and the operations of protective committees, depositaries under protective committee agreements, and solicitors for protective committee agreements; to authorize said commission to have supervision over defaulted bonds, notes, debentures, certificates of participation and similar evidences of indebtedness; to prescribe the powers and duties of such commission; to license members of protective committees, depositaries under protective committee agreements and solicitors for protective committee agreements; to regulate and supervise and control the solicitation by anyone of bonds, notes, debentures and all other similar evidences of indebtedness, issued by the maker of any security for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness; to authorize such commission to act as custodian or receiver and appoint custodians, agents and managers of defaulted mortgage property under orders of court or otherwise; to prescribe penalties for violation of this act; and to repeal Act No. 37 of the Public Acts of the first extra session of 1932.

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History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- Am. 1935, Act 218, Imd. Eff. June 8, 1935

The People of the State of Michigan enact:

451.302 Protective committees, depositaries and solicitors; definitions.

Sec. 2.

Definitions as used in this act are as follows:

(a) The term "commission" means the public trust commission as hereinbefore created.

(b) The term "person" or "persons" shall include natural persons, corporations, partnerships, associations, companies, and syndicates.

(c) The term "security" or "securities" shall include bonds, notes, debentures, and any other instrument of like character used to evidence indebtedness.

(d) The term "protective committee" shall include all persons who propose or purport to act, or who are now acting, for and in behalf of others and/or themselves with respect to a security and/or for the purpose of protecting and preserving the common interests of the holders or owners of the particular security.

(e) The term "depositary" shall include all persons who propose to act, or who are now acting, in connection with a protective committee for the purpose of accepting securities for deposit under and/or consents to a protective committee agreement.

(f) The term "solicitor" shall include all persons who procure or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly the deposit of securities with a depositary under a protective committee agreement or similar instrument and/or who procure

or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly, the consent of holders or owners of securities to a protective committee agreement or similar instrument.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.302

451.303 Protective committees, depositaries and solicitors; license applications, fees, hearing, bonds; inactive committee or depositary; names, inspection.

Sec. 3.

It shall be unlawful for any person to act as a member of a protective committee, as a depositary or as a solicitor in this state for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness without first procuring a license and continuing to be licensed therefor. Any person desiring a license either as a member of a protective committee, as a depositary, or as a solicitor shall apply therefor to the commission upon application forms to be furnished by the commission. Such application shall, in the event that the applicant is a natural person, set forth the name, age, residence, business address, principal occupation and antecedent business experience of the applicant, the name of the security with respect to which the applicant desires to act, and such other facts as the commission shall require. In the event that the applicant is a non-natural person the application shall set forth such pertinent information as the commission may require including information and facts concerning the applicant's principal officers or members similar to those required of natural persons. The commission may require such further information as it shall deem necessary to satisfy it of the integrity and the financial responsibility of the applicant. Every application shall be under oath. An annual license fee of 5 cents for each 1,000 dollars par value of outstanding bonds or notes shall be charged each protective committee and each depositary, and an annual license fee of 25 dollars shall be charged each solicitor, for each issue, and these respective license fees shall accompany the application: Provided, however, That the commission, in its discretion, may provide that such respective license fees need not accompany the application, but the payment thereof may be deferred to such time as the commission shall designate. In case the payment of such respective license fees is deferred as above provided, such fees shall be a lien on the securities deposited. If the commission should conclude that a license should not issue, the application may be denied: Provided, That no order of denial shall be entered until the applicant has been given a hearing on the reasons for such denial. Any duly licensed member of a protective committee may act as a solicitor without procuring a license as such.

The commission may in its discretion require a sufficient bond to be filed by each of the members of the bondholder's committee. Such bonds shall be subject to the approval of the commission.

In case any protective committee or depositary which is in existence at the time this act shall take effect, shall fail to function, the commission, in its discretion, may grant to the protective committee or depositary whose application covering the same issue of securities has been granted under the provisions of this act, power to function as and in lieu of such inactive protective committee or depositary or the commission may designate a person or persons to act as a protective committee and/or the commission may designate a person or persons to act as a depositary under the provisions of this act, and/or the commission may designate a person or persons to act as conservator of the deposit agreement of the inactive protective committee and/or the deposited securities pledged or remaining or deposited under the emergency clause

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of this act. In all cases of inactive or delinquent protective committees or inactive or delinquent depositaries the commission shall have power to summon and compel such committees and/or depositaries to appear at a hearing before said commission, by giving 3 days notice to such inactive or delinquent committee and/or depositary. At such hearing, the commission shall take proofs and hear evidence as to the delinquency and/or inactivity complained of. In the event the commission shall decide that it is necessary for the safeguarding of the interests of the holders or owners of the particular security under control of delinquent and inactive committee and/or depositary it shall enter such order in the premises in accordance with its findings, and shall have power to compel the inactive or delinquent committee and/or depositary to surrender, deliver and yield up forthwith to the commission, or to any depositary nominated by said commission, all securities of every kind theretofore deposited with said inactive or delinquent committee or depositary whose license was revoked by this commission and make such other order and/or orders in the matter, as may be necessary or advisable in the judgment of the commission to safeguard and protect the interest of said security holders, and preserve any liens, attaching to such securities. The names and addresses of bondholders filed with the commission shall be open to the mortgagor, or successor to title of record upon proper application to the commission, but shall not be made public or subject to inspection by anyone not connected with the commission, except by order of the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- Am. 1933, Act 205, Imd. Eff. June 28, 1933 ;-- Am. 1935, Act 218, Imd. Eff. June 8, 1935 ;-- CL 1948, 451.303

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451.304 Protective committees, depositaries and solicitors; licenses, non-resident applicants, filing; service of process.

Sec. 4.

Every applicant for a license who is a non-resident of this state shall file with the application an irrevocable consent that suits and actions arising out of or founded upon any activity of such applicant in this state as a member of a protective committee, as depositary, or as solicitor, as the case may be, may be commenced against the applicant in the proper court of any county in the state in which the plaintiff may reside, or if the plaintiff is a non-resident, in Ingham county, by the service of any process authorized by the laws of this state on the chairman of the commission; said consent stipulating and agreeing that such service of any process on such chairman shall be taken and held in all courts to be as valid and binding as if due service had been made on the applicant personally. All process which shall be served upon said chairman in reliance upon the consent of an applicant shall be served in duplicate, 1 of which shall be retained in the office of the commission and the other forwarded by the commission forthwith by registered mail to the address of the person against whom said process is directed.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.304

451.305 Protective committees, depositaries and solicitors; licenses, suspension or revocation.

Sec. 5.

The commission shall have the power to suspend or revoke licenses once issued for any practices on the part of the person licensed partaking of, or actually resulting in, fraud,

deception or imposition upon the holders or owners of securities whether or not such holders or owners have deposited their securities and/or consented to a protective committee agreement, and also for activity in violation of the commission's orders or rulings or the provisions of this act, or in case of members of protective committees for failure to act expeditiously in the matter with respect to which they organized: Provided, That no order of suspension or revocation of license shall be entered until the person licensed has been given a hearing on the reasons for such suspension or revocation. Upon notice of revocation, it shall be the duty of the person licensed to return the license to the commission for cancellation.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.305

451.306 Protective committees; statement, contents; application to solicit security holders.

Sec. 6.

Before any protective committee now in existence or hereafter formed, shall employ solicitors, or itself solicit, the deposit of securities with a depositary under a protective agreement and/or the consent of holders or owners of securities to a protective agreement, it shall file with the commission a statement under oath containing the following information:

(a) The amount of the particular security originally issued;

(b) The amount of the particular security outstanding at the date of the execution of the statement;

(c) The names and addresses of all persons known to or believed by the protective committee to be the holder or owner of the particular security and the amount of the particular security which such persons severally hold or own;

(d) A copy of the agreement or indenture, if any, under which the security was issued;

(e) The purpose and reasons for the organization and formation of the protective committee;

(f) A copy of the depository or protective agreement which the protective committee proposes to employ, and in the case of existing protective committees, a copy of the depository or protective agreement which the committee is now employing, in the procurement of the deposit of securities and/or the consent to a protective committee agreement of the holders or owners of securities;

(g) A complete list of the names and addresses of the members of the protective committee and an identification of its chairman and its secretary;

(h) The name and address of the person or persons who executed the security.

The foregoing statement shall, in the case of protective committees organized after the date this act goes into effect, be accompanied by an application for permission to solicit the holders or owners to make deposit of the particular security under, and/or to procure the consent of holders or owners to the proposed protective committee agreement, and no such solicitation shall be made unless and until the application is granted by the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.306

451.307 Protective committees; solicitation of security holders; fraud, conditions, limitation of charges.

Sec. 7.

The right to solicit the deposit of securities by, and/or the consent to a protective committee agreement of, the holders or owners of securities in this state by protective committees

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organized after this act goes into effect shall not be granted by the commission in any case where it appears to the commission that such solicitation of deposit and/or consent would work a fraud, deception, or damage on the holders or owners of said securities. The commission may impose such conditions as it may determine to be necessary to safeguard the holders or owners of the particular security and said commission may also supervise the terms and provisions of the depository or protective committee agreement and may limit the compensation of, and the charges to be made against a depositing and/or consenting holder or owner, by the protective committee, which compensation shall include all expenses of said protective committee, its agents, and attorneys.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.307

451.308 Protective committees; notice to issuer of security, objections, hearing.

Sec. 8.

Before said commission shall authorize a protective committee which is organized after this act goes into effect to solicit, either through its members or its employes, the deposit of securities and/or the consent of holders or owners of securities, it shall cause notice to be served by registered mail upon the person or persons who executed said security, advising said person or persons that an application for permission to solicit the deposit of the particular security and/or the consent of the holders or owners to a protective committee agreement has been filed with said commission and that if there are any objections to the granting of such application written objections thereto shall be filed with the commission within 15 days from the date of the receipt of said notice. The commission is hereby authorized and empowered for good cause shown to extend the time within which such written objections may be filed.

In the event that no written objections are filed with said commission by the person or persons who executed said security within 15 days from the date of the receipt of the aforesaid notice or within such further time as the commission may allow, said commission shall proceed promptly to dispose of said application.

In the event, however, that written objections are filed within proper time as aforesaid, the commission shall promptly serve notice upon the chairman and secretary of the protective committee and upon the person or persons who filed the written objections that a hearing of the matter will be had before the commission at a time and place designated by the commission. At such hearing there may be presented to the commission such testimony and evidence as bears upon the question whether the solicitation of the deposit of securities and/or the consent of holders or owners to the protective committee agreement would work a fraud, deception, or damage on the holders or owners of said security. After said hearing, the commission shall proceed promptly to dispose of said application.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.308

451.309 Protective committees; records and reports.

Sec. 9.

Every protective committee now in existence or hereafter to be formed shall keep a written record of its meetings, doings and activities and it shall file with the commission at least as often as once each month a written report under oath of its meetings, doings and activities for the period preceding the date of the report. The report shall set forth the minutes of its meetings, all data as to negotiations with or in behalf of the holders or owners of the security

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with respect to which the protective committee was organized; the names and addresses of persons who have deposited their security and/or consented to the protective committee agreement, the total amount of the security which has been deposited and/or with respect to which consent to the protective agreement has been obtained, and such other or further facts pertinent to its activity. Said commission may request any protective committee to supplement its reports from time to time with such information as the said commission may deem necessary or expedient.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.309

451.310 Protective committees; authority to take action.

Sec. 10.

No protective committee, either now in existence or hereafter to be organized, shall take or authorize the taking of any action by suit or otherwise, against the property and/or business with respect to which a security was issued and/or against any person or persons liable or obligated in connection with said property or security, or consent to or approve of any plan, agreement, sale or exchange with respect to such security and/or property, unless the authority so to do has been conferred upon the protective committee by the commission.

Any committee desiring to obtain such authority shall file with the commission an application therefor; which application shall set forth the proposed action, plan, agreement, sale or exchange. Thereupon the commission shall enter an order appointing a time and place for a hearing before the commission upon said application and upon the fairness of the terms and conditions of the proposed action, plan, agreement, sale or exchange, and providing for the giving of notice of said hearing, either by mail or by publication, or both, as the commission shall determine, to all holders or owners of said securities, and to all persons to whom it is proposed to issue securities in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash. Any interested party, including all persons to whom it is proposed to issue securities in such exchange, shall have the right to appear at said hearing and to be heard.

The commission shall have the authority to approve said application, if satisfied that said action, plan, agreement, sale or exchange will not work a fraud, deception or damage upon the holders or owners of the securities affected thereby. If it is proposed to issue any security in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, authority to make, consent to or approve of such exchange shall not be granted unless, after such hearing, the fairness of the terms and conditions of such exchange are approved by the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- Am. 1935, Act 218, Imd. Eff. June 8, 1935 ;-- Am. 1943, Act 149, Imd. Eff. Apr. 14, 1943 ;-- CL 1948, 451.310

451.311 Public trust commission; investigations, audits and appraisals.

Sec. 11.

The said commission is authorized and empowered to make investigations, audits, or appraisals relative to or in connection with the property and/or business located in this state with respect to which the security for the protection of which a protective committee has been organized. The said commission is authorized to act for and in behalf of the holders or owners of defaulted mortgage securities by acting as custodian, and is hereby authorized to appoint

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custodians of defaulted mortgage property and to have supervision of defaulted bonds, notes, debentures, and any other instruments of like character used to evidence indebtedness secured by mortgage. All books, records and documents of the commission whether filed with it or prepared by it shall be open to the public.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- Am. 1935, Act 218, Imd. Eff. June 8, 1935 ;-- CL 1948, 451.311

451.312 Public trust commission; subpoenas, oaths, records.

Sec. 12.

The said commission is authorized and empowered to issue subpoenas to compel the attendance of witnesses and to compel the production of books, records and documents in connection with any investigation, hearing, or other matter pending before the board, to issue process to compel such attendance and production. Each member shall be authorized to swear witnesses and administer oaths in any matter coming before him or the commission. The commission shall keep records of its hearings, meetings and other activities. Any witness who refuses to obey a subpoena or who refuses to be sworn or testify, or who fails to produce any papers, books or documents touching any matter under investigation, or any witness, party or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court; and for this purpose an application may be made to any circuit court within whose territorial jurisdiction the offense is committed, and for which purpose the court is hereby given jurisdiction.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.312

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451.313 Public trust commission; investigations; costs; audits and appraisals.

Sec. 13.

Any person interested in any security in connection with which a protective committee is organized may request the commission to make an investigation, audit, or appraisal and report with respect to the property or business to which the security pertains. However, before any investigation, audit, or appraisal and report is made by the commission upon such a request, the person so requesting shall, if required by the commission, deposit with the commission the sum of money that the commission considers necessary to meet the cost of the investigation, audit, or appraisal and report. If the deposit is insufficient to defray the cost of the investigation, audit, or appraisal and report, the commission may request further deposits as a condition of the continuance by it of its investigation, audit, or appraisal and report. All money so deposited shall be deposited by the commission in the state treasury in a special fund and disbursements from that fund shall be upon the warrant drawn on the state treasurer, and any disbursements shall be for the purposes for which the money is paid. Any excess over and above the cost of the requested investigation, audit, or appraisal and report shall be returned to the person who made the deposit.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.313 ;-- Am. 2002, Act 104, Imd. Eff. Mar. 27, 2002

451.315 Public trust commission; suspension of orders, grounds, procedure.

Sec. 15.

The commission may temporarily suspend any of its orders when it appears to such commission that the terms of an order have been or are about to be violated but no such suspension order shall be effective for longer than 10 days unless the commission shall within such time serve notice upon the persons affected of the reason therefor, and shall grant a hearing thereon at a date not more than 15 days from the date of the suspension order. After such hearing the commission may either withdraw its suspension order or make the order of suspension a permanent order of revocation in accordance with the evidence.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.315

451.316 Aggrieved parties; action in circuit court.

Sec. 16.

Any person aggrieved by any order or action of the commission may apply to the circuit court of which such person is a resident or to the circuit court for Ingham county for any relief to which said person shall deem himself entitled, and in said suit the members of said commission shall be named as defendant and process may be served on the commission by serving any member thereof: Provided, That no injunction or other order shall issue suspending or staying any order or decree of said commission except after due notice to the commission and a reasonable opportunity for hearing thereon.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.316

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451.317 Fiduciary's relation to security holders; reports of purchases.

Sec. 17.

All mortgagors and all persons who are depositaries, solicitors, and members of protective committees shall be deemed to be in a fiduciary relationship to the holders or owners of the securities with respect to which they are mortgagors, depositaries, solicitors, and members of protective committees, respectively, whether or not such holders or owners have deposited their securities and/or consented to the protective committee agreement; and every purchase by a mortgagor, depositary, solicitor or member of a protective committee of securities with respect to which such purchaser is the mortgagor, depositary, solicitor or member of a protective committee, respectively, shall be forthwith disclosed in writing to the commission by such purchaser.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- Am. 1937, Act 212, Imd. Eff. July 21, 1937 ;-- CL 1948, 451.317

451.318 Construction of act; severing clause.

Sec. 18.

The provisions of this act shall be liberally construed to the end that the purposes thereof may be accomplished by preventing fraud, deception and damage on holders or owners of securities. Should any section or clause of this act be declared invalid by any court of last resort having jurisdiction in the premises, then such decision shall affect only the section or clause so declared to be invalid and shall not affect any other section or clause of this act.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.318

451.318a Bonds; exception from act; securities exempt from blue sky law and mortgage tax act.

Sec. 18a.

The provisions of this act shall not be construed to apply to the bonds and other obligations issued by the United States government, by any state of the United States, or by any political subdivision thereof, or by any assessment district.

The exchange of securities for other securities, when such exchange has been approved by the commission, shall be exempt from the provisions of Act No. 220 of the Public Acts of 1923, as amended, and Act No. 91 of the Public Acts of 1911.

History: Add. 1933, Act 205, Imd. Eff. June 28, 1933 ;-- CL 1948, 451.318a
Compiler's Notes: Act 91 of 1911, referred to in this section, was repealed by Act 301 of 1939. Act 220 of 1923, also referred to in this section, was repealed by Act 265 of 1964.

451.319 Violation of act; penalty.

Sec. 19.

Any person violating any of the provisions of sections 3, 5, 6, 9, 10 and 17 shall be punished by a fine of not less than 500 dollars nor more than 5,000 dollars, together with costs of prosecution, or by imprisonment in the Michigan reformatory at Ionia, state prison or other penal institutions for not less than 6 months nor more than 2 years, or both such fine and imprisonment in the discretion of the court. The term "person" as is used in this section shall include an officer or employe of a corporation or a member or employe of a partnership who as such officer, employe or member is under duty to perform the act in respect to which the violation occurred.

History: 1933, Act 89, Imd. Eff. May 25, 1933 ;-- CL 1948, 451.319

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