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BILL



ANALYSIS

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Senate Bill 518 (as enrolled)
Sponsor: Senator Michael J. Bouchard
Senate Committee: Financial Services
House Committee: Commerce

PUBLIC ACT 202 of 1995

Date Completed: 4-10-96

RATIONALE

On September 29, 1994, President Clinton signed into law the Riegle-Neal Interstate Banking and Branching Efficiency Act. Among other things, that Act will allow interstate branching of bank operations by merger after June 1, 1997. (That is, a bank chartered in one state could acquire or merge with a bank or bank branch in another state without obtaining a charter in the second state.) Before that date, however, states may opt-in early or opt-out of interstate branching by merger. If a state does not take either of those actions, interstate branching will become effective in that state under the Federal Act on June 1, 1997. Adopting legislation that authorizes a bank from any state to branch into Michigan and allows Michigan-chartered banks to branch outside of Michigan accomplishes an early opt-in to interstate branching. (If enabling opt-in legislation is adopted, nationally chartered banks automatically have the power to branch interstate.) In addition, since September 29, 1995, regardless of whether a state opts in or out of interstate branching, bank holding companies have been permitted to acquire a bank located in any other state and national banks have the authority to act as agents for affiliated depository institutions. Some people believe that those states that opt-in early have a competitive advantage over other states and are more likely to become headquarter states for large, interstate banking operations. They contend that, in order to maintain the strength of Michigan's banking business and to put itself in an attractive position compared with other states, Michigan should opt-in early to interstate branching of banking operations, allow State banks to act as agents for affiliated institutions, and repeal its regulations pertaining to a bank holding company's acquisition of banks.

CONTENT

The bill amended the Banking Code to do all of the following:

- Provide for interstate branching of banking operations, including allowing a bank to act as the agent for an affiliated depository institution.
- Allow the Commissioner of the Financial Institutions Bureau (FIB) to examine branches of out-of-state banks located in Michigan and to take actions against an "out-of-state bank" branch located in Michigan that would be allowed if the branch were a "bank".
- Allow a bank to buy branches from or sell branches to a bank, out-of-state bank, "national bank", "association", or "savings bank".
- Authorize the consolidation of a bank with other "consolidating organizations" to form a "consolidated bank" or "consolidated organization", and specify that there is no limit on the amount or share of deposits held or controlled in Michigan by any bank on a consolidated basis.
- Provide for the operation in Michigan of a foreign bank's "state foreign bank branch" or "foreign bank representative office".
- Specify that the Code's confidentiality restrictions on the FIB Commissioner do not apply under certain circumstances.
- Allow an "institution" that is served a temporary cease and desist order to apply to the circuit court for an injunction.

- **Require a bank's board of directors to meet not less than six times per fiscal year, rather than at least once each month.**
- **Repeal four sections of the Code that dealt with recording a consolidation agreement, branch facilities, and bank holding company acquisitions.**

Definitions

Under the bill, "association" means a Federal savings association organized under the Federal Home Owners' Loan Act or a savings and loan association, building and loan association, or homestead association organized under the laws of a state whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

Under the Banking Code, "bank" means a state banking corporation organized or reorganized under the Code or organized under any Michigan law enacted before August 20, 1969. The bill defines "national bank" as a bank chartered by the Federal government under the National Bank Act. "Out-of-state bank" means a banking corporation organized under the laws of another state, a territory, or a protectorate of the United States whose principal office is located in another state, territory, or protectorate of the United States, and whose deposits are insured by the FDIC. "Savings bank" means a savings bank organized under the laws of a state, territory, protectorate of the United States, or the United States, whose deposits are insured by the FDIC.

"Consolidated bank" means a bank that results from a consolidation between a bank and one or more banks, out-of-state banks, national banks, associations, or savings banks; "consolidated organization" means an out-of-state bank, national bank, association, or savings bank organized under the laws of another state or the United States that results from a consolidation with one or more banks, out-of-state banks, national banks, associations, or savings banks; and "consolidating organizations" means any combination of banks, out-of-state banks, national banks, associations, or savings banks that have consolidated or are in the process of consolidating.

"Depository institution" means a bank, out-of-state bank, national bank, association, savings bank, or credit union organized under the laws of Michigan, another state, or the United States. "Institution" means a bank, state agency, state foreign bank branch, or safe and collateral deposit company

operating or organized or reorganized under the Banking Code or operating or organized under any Michigan law enacted before August 20, 1969.

"Foreign bank" means an entity organized and recognized as a bank under the laws of a foreign country that lawfully engages in the business of banking and is not directly or indirectly owned or controlled by United States citizens or by a corporation organized under U.S. laws. "Foreign bank agency" means an office or place of business of a foreign bank established under the Banking Code, the Federal International Banking Act, or the laws of another state, that does not exercise trust powers and at which deposits of U.S. citizens or residents are not accepted. "Foreign bank branch" means a place of business of a foreign bank, located in any state, territory, or protectorate of the United States, that is not a foreign bank agency, bank, or out-of-state bank, at which deposits are received and that is established and operated as a branch of a foreign bank under the Banking Code, the Federal International Banking Act, or the laws of another state. "State foreign bank branch" means a foreign bank branch established and operating under the Banking Code. "State agency" means a foreign bank agency established and operating under the Banking Code.

Interstate Branching

Branch Operations. The Code previously provided that, with the FIB Commissioner's written approval, a bank could establish and operate a branch or branches within Michigan. Under the bill, with the Commissioner's approval, a Michigan bank may establish and operate a branch or branches within the United States and its territories and protectorates. In addition, an out-of-state bank may establish and operate one or more branches in Michigan, if the out-of-state bank is located in a state, territory, or protectorate of the United States whose laws permit the establishment of a branch by a Michigan bank in that state, territory, or protectorate.

The Code also allowed a bank to contract with another bank to act as a branch to provide services to the customers of the contracting bank. The bill allows a Michigan bank to contract with one or more banks, out-of-state banks, national banks, associations, or savings banks. Similarly, with the Commissioner's approval, one or more out-of-state banks, national banks, associations, or savings banks may contract with a Michigan bank to provide services to the customers of the

contracting out-of-state bank, national bank, association, or savings bank.

Previously, under the Code, a state agency established and operating pursuant to the Banking Code could establish and operate additional offices in Michigan. Under the bill, a state agency or state foreign bank branch may establish and operate additional offices in the United States and its territories and protectorates. In addition, a foreign bank branch that has designated a home state other than Michigan may establish and operate one or more additional offices in Michigan.

Banking Authorization. The Code previously prohibited a person from engaging in the business of banking, unless that person was an incorporated bank having its principal place of business located in Michigan and engaged in the banking business on August 20, 1969, pursuant to the authority of the National Bank Act or former Public Act 341 of 1937, or a bank having its principal place of business located in Michigan and incorporated under the Banking Code or the National Bank Act. The bill deleted that prohibition and provides, instead, that a person may not engage in the business of banking in Michigan unless authorized by the Code, the laws of another state, the National Bank Act, the International Banking Act, or, if engaged in the business of banking on the Banking Code's effective date, under authority of former Public Act 341 of 1937.

The Code also prohibited a person other than an individual or corporation from acting as fiduciary, other than as an escrow agent. A corporation could not act as fiduciary, other than as an escrow agent, except for: 1) a trust company or a bank with trust powers that had its principal place of business located in Michigan and engaged in the trust business on August 20, 1969, pursuant to the National Bank Act or former Public Act 341 of 1937; 2) a bank that had its principal place of business in Michigan and obtained trust powers under the Banking Code or the National Bank Act; or 3) a nonbanking corporation to the extent that it could have been specifically authorized to act as fiduciary in Michigan by another Michigan statute. The bill deleted this provision and specifies, instead, that except for acting as an escrow agent, only an individual or corporation may act as a fiduciary in Michigan. A corporation acting as a fiduciary may do so only if it is one of the following:

- A bank or state foreign bank branch authorized to exercise trust powers under

the Banking Code, or a national bank authorized to exercise trust powers under the National Bank Act, or authorized to conduct trust business in Michigan prior to the bill's effective date.

- An out-of-state bank, authorized to exercise trust powers under the law of the state where it is organized, to the extent a bank may exercise trust powers under the Code.
- A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in Michigan by another Michigan statute.

Corporate Powers. The Code provides that a bank may engage in the business of banking and a business related or incidental to banking, and specifies additional corporate powers. The bill added all of the following to that list of corporate powers:

- To enter into agency relationships with affiliated depository institutions. A bank or an affiliated depository institution, in its capacity as an agent, may receive deposits, permit withdrawals of deposits, renew time deposits, close loans, service loans, receive loan payments, and engage in any activity specifically authorized by the Code or by order or declaratory ruling of the FIB Commissioner.
- As authorized by order or declaratory ruling of the Commissioner, to exercise at its branch in another state powers consistent with the safe and sound conduct of the business of banking granted by the laws of the state in which the branch is located.
- As authorized by order or declaratory ruling of the Commissioner, to exercise further powers consistent with the safe and sound conduct of the business of banking granted by the laws of the United States to national banks.

FIB Examination and Enforcement Actions

Under the Code, each institution, together with its subsidiaries and service corporations, is subject to examination of the FIB Commissioner. The Commissioner is required to examine the condition and affairs of each institution once or more each calendar year. The bill specifies that the Commissioner may examine the branch or branches of an out-of-state bank located in Michigan as permitted by the Federal Deposit Insurance Act. In fulfilling the Code's examination requirements, the FIB Commissioner may use an

examination made pursuant to the Federal Reserve Act or the Federal Deposit Insurance Act. The bill also allows the use of an examination under the law of another state governing the activities of banks. The Commissioner also may contract with other state bank regulatory agencies to assist in the conduct of examinations of Michigan banks with one or more branches located in other states and in examinations of out-of-state banks with one or more branches located in Michigan.

If the FIB Commissioner determines that an out-of-state bank branch located in Michigan is acting in violation of Michigan laws or is being operated in an unsafe and unsound manner, the Commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a Michigan bank.

Buying and Selling

The Code previously allowed a bank to sell all or substantially all of its assets to any bank and to buy all or substantially all of the assets of another bank, with the approval of the FIB Commissioner and upon the affirmative vote of both two-thirds of the members of the bank's board of directors and two-thirds of the holders of the bank's stock entitled to vote.

The bill specifies that a bank also may sell one or more of its branches, without selling all or substantially all of the bank, to a bank, out-of-state bank, national bank, association, or savings bank located in a state whose laws permit a bank to purchase one or more branches in the state of the purchasing depository institution. In addition, a bank may purchase one or more branches, without purchasing all or substantially all of the depository institution, from a bank, out-of-state bank, national bank, association, or savings bank. Under the bill, the transaction requires the affirmative vote of a *majority* of the board members and two-thirds of the stockholders.

Consolidation

The Code previously allowed two or more banks to consolidate into a single bank, which could be any one of the consolidating banks, with the approval of the FIB Commissioner. A bank also could have consolidated with a national banking association under the charter of the national banking association. Also, with the approval of the Commissioner, a national banking association or stock association could have consolidated with a

bank under the charter of the bank. The bill deleted these provisions and, instead, specifies that, subject to the Commissioner's approval, a bank may consolidate with any number of consolidating organizations to form a consolidated bank. (A consolidated *bank* is a Michigan-based bank that results from consolidation.)

A bank also may consolidate with any number of consolidating organizations to form a consolidated organization in accordance with the laws under which the consolidated organization is chartered, if the following apply:

- Consolidation is permitted by the laws under which each consolidating organization is organized and the appropriate regulator or regulators approve the consolidation. (This requirement will not apply after May 31, 1997.)
- The consolidating organizations provide notice to the FIB Commissioner by filing a copy of the application for consolidation within 10 days after the date the application is filed with the appropriate Federal regulator.
- The consolidated organization complies with the bill's notice requirements, but that notice is limited to a Michigan court, public tribunal, agency, or officer.

(A consolidated *organization* is an out-of-state bank, national bank, association, or savings bank organized under the laws of another state or the U.S. that results from a consolidation.)

If an out-of-state bank, national bank, association, or savings bank is a consolidating organization and approval is required by U.S. laws, that organization must furnish to the FIB Commissioner a certified copy of the appropriate Federal regulator's consent or approval of the consolidation.

Under the bill, with the FIB Commissioner's approval, a bank, out-of-state bank, or national bank that consolidates its operations with, or purchases the assets or one or more branches of, another bank, out-of-state bank, national bank, association, or savings bank may operate the consolidated or acquired bank, out-of-state bank, national bank, association, or savings bank branch or branches located in Michigan as a branch or branches of the consolidated or acquired bank. A bank, out-of-state bank, national bank, association, or savings bank that operates a branch in Michigan as the result of a consolidation

or purchase of assets or a branch or branches under the bill must provide notice of that operation to the FIB Commissioner within 30 days after the effective date of the consolidation.

Regardless of whether it maintains a presence in Michigan, a consolidated organization or any of its successors is subject to service of process in a proceeding in Michigan for enforcement of any obligation incurred in Michigan by any consolidating organization that is or has been a party to a consolidation.

Notwithstanding the Federal Interstate Banking and Branching Efficiency Act, there is no limit upon the amount or share of deposits held or controlled in Michigan by any bank, out-of-state bank, national bank, or bank holding company on a consolidated basis.

Foreign Bank Presence

The Code allows a foreign bank that has complied with the laws of its country and that does not operate a Federal agency in Michigan to submit to the FIB Commissioner an application to establish a State foreign bank agency. The bill deleted a requirement that an application contain information the Commissioner considered necessary to enable him or her to determine whether the applicant was entitled to a certificate of authority and a provision that required an applicant to pay to the Commissioner fees to the same extent required for the processing of an application for the organization of a new bank.

The bill also allows a foreign bank to submit to the Commissioner an application to establish and operate a State foreign bank branch, if the foreign bank is in compliance with the laws of the jurisdiction in which it is chartered or incorporated and it has not previously designated any other state as its home state under provisions of the International Banking Act. A State foreign bank branch does not have to become an insured bank, as defined in the Federal Deposit Insurance Act, unless the State foreign bank branch accepts deposits described in that Act.

In addition, upon written notification to the Commissioner, a foreign bank may establish and operate a "foreign bank representative office" in Michigan, if it is in compliance with the applicable laws of the jurisdiction in which it is chartered or incorporated. Operations of a "foreign bank representative office" (which is not defined in the bill) are limited to representational functions.

(A State foreign bank *agency* is an office or place of business of a foreign bank, operating under the Banking Code, at which deposits of U.S. citizens or residents are not accepted. A State foreign bank *branch* is a place of business of a foreign bank, that is established and operated under the Banking Code, that is not a foreign bank agency, bank, or out-of-state bank, at which deposits are received and that is established and operated as a branch of a foreign bank.)

The bill allows the Commissioner to consider a foreign bank's sufficiency of capital and surplus and its prospects for successful operation before approving an application for the establishment of a State foreign bank agency or State foreign bank branch. The bill grants to the Commissioner the same regulatory authority over a State foreign bank branch and a foreign bank representative office that the Code grants to the Commissioner with respect to a State foreign bank agency.

Confidentiality

Under the Code, the FIB Commissioner and all deputies, agents, and employees of the FIB are bound by oath to keep secret all facts and information obtained in the course of their duties, unless required by law to report on, take official action, or testify in any proceeding regarding the affairs of an institution. The confidentiality provisions, however, do not apply to or prohibit the furnishing of information or documents to the Federal bank regulatory agencies, and they do not prohibit disclosures made to interested parties by the Commissioner, at his or her discretion, with respect to applications for the chartering of new banks, applications for new branch offices, or applications for the moving of banking offices. The bill also allows the furnishing of information or documents to out-of-state bank, association, or savings bank regulatory agencies, and it allows, at the Commissioner's discretion, disclosures made to interested parties with respect to supervisory actions and examinations.

Cease and Desist Order

The Code allows the FIB Commissioner to issue and serve upon an institution a notice of charges and to fix a time and place at which a hearing will be held to determine whether an order to cease and desist should be issued. That action may be taken if, in the Commissioner's opinion, an institution is engaging or has engaged, or the Commissioner has reasonable cause to believe that the institution is about to engage, in an unsafe

or unsound practice in conducting its business, or is violating or has violated, or the Commissioner has reasonable cause to believe that the institution is about to violate, a law or rule. After a hearing, the Commissioner may require the institution and its directors, officers, employees, and agents to cease and desist from the practice or violation and to take affirmative action to correct the conditions resulting from the practice or violation. A cease and desist order generally takes effect 30 days after the service of the order.

Under the bill, within 10 days after an institution is served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the institution's home office is located for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings under the notice of charges served upon the institution.

Repealers

The bill repealed sections of the Banking Code that did the following:

- Required that a certified copy of a consolidation agreement be recorded in the office of the register of deeds of each county in which real property owned by any of the consolidating organizations was situated (MCL 487.427).
- Provided for a bank's or national banking association's designation as a "section 172 bank" (MCL 487.472).
- Provided for a bank's establishment and operation of a "branch facility", with limited operational authorization (MCL 487.473). (A branch facility could not have been established if any State or national bank or branch was in operation within five miles of the branch facility; and a branch facility could not have been established in a city or incorporated village having a population of more than 1,000.)
- Regulated a bank holding company's acquisition of the voting shares or capital stock of a banking institution (MCL 487.430b).

MCL 487.305 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Michigan should opt-in early to permit interstate branching of bank operations. By authorizing out-of-state banks to branch into Michigan by merger and allowing State-chartered banks to branch outside of Michigan, the bill accomplishes Michigan's early opt-in to interstate branching. Michigan's banking industry is large and healthy. Opting in to interstate branching at this point places the State in a competitively advantageous position relative to other states. Michigan-based banks will have a clear market incentive to retain their headquarters in the State as the banking industry embarks on a new era, and the State's regulatory environment will be more conducive to attracting other banks' headquarters.

In addition, the Federal Interstate Banking and Branching Efficiency Act allows a nationally chartered bank to engage in certain interstate activities, like acting as the agent for affiliated institutions, effective September 29, 1995, regardless of whether the bank's home state has taken any legislative action regarding interstate branching. For Michigan's State-chartered banks to remain competitive with Michigan-based nationally chartered institutions, then, it is necessary for Michigan to opt-in early to interstate branching of bank operations. The Federal Act also allows bank holding companies to acquire banks or other bank holding companies in any state after September 29, 1995. Coupled with continuing consolidation in the banking industry, this new power is likely to result in significantly fewer and larger banks. If Michigan is to continue to have a strong and healthy banking industry, its regulatory structure must be consistent with and open to these likely consolidations and acquisitions. To do so, interstate branching should be authorized and the Code's regulations regarding a bank holding company's acquisition of banks should be repealed.

Response: There are some regulatory "gray areas" that may need to be addressed. For instance, although out-of-state banks that have a presence in Michigan presumably will have to

comply with Michigan law (e.g., regarding interest rate caps on loans), there is some uncertainty as to whether that will be the case in a transaction involving an out-of-state bank's Michigan branch in which paperwork is simply processed in Michigan but loan approval is secured in another state. In addition, the FIB Commissioner, in testimony before the Senate Financial Services Committee, indicated that Michigan may not impose the State's interest rate caps on out-of-state lenders who operate on-line via computer rather than establishing a physical presence here. Perhaps the State should address these issues in addition to opting-in to interstate branching.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill will have no fiscal impact on State or local government. The fee structure that had been included in this bill was subsequently taken out before its passage in the House. Public Act 90 of 1995 already enacted these provisions; therefore, it was unnecessary to include them again.

Fiscal Analyst: M. Barsch

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.