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BILL ANALYSIS



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Senate Bill 1018 (as enrolled)  
Sponsor: Senator Loren Bennett  
Senate Committee: Financial Services  
House Committee: Commerce

**PUBLIC ACT 405 of 1996**

Date Completed: 1-15-97

**CONTENT**

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

- Allow banks to engage directly in the real estate brokerage business or own a real estate brokerage business.
- Specify that the Financial Institutions Bureau (FIB) Commissioner's schedule of fees applies to institutions, out-of-state banks, national banks, and foreign banks.
- Delete specific authorization for an institution to apply to the circuit court for an injunction of a temporary cease and desist order.
- Revise the conditions under which a corporation may act as a fiduciary.
- Require notification, rather than approval, of the FIB Commissioner before certain actions are allowed.
- Provide for the continuation of a bank holding company's written agreement to abide by Michigan law regarding loans made in Michigan to Michigan residents, under certain circumstances.
- Require an out-of-state bank, national bank, or foreign bank operating in Michigan to maintain an agent in Michigan for service of process in judicial and administrative matters.
- Apply regulations regarding a bank's permanent discontinuance of operations of a branch to a foreign bank branch, and require an out-of-state bank or national bank to notify the FIB Commissioner of a discontinuance of a branch's operations.
- Repeal a section governing the extension of credit to bank officers (MCL 487.511).

Current Definitions

"Bank" means a State banking corporation organized or reorganized under the Code or organized under any Michigan law enacted before August 20, 1969.

"National bank" means 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 Federal Deposit Insurance Corporation (FDIC).

"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.

"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 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.

## Schedule of Fees

The Code requires that the FIB Commissioner periodically establish a schedule of fees to be paid for examinations, evaluations, and applications considered necessary by the Commissioner. The bill specifies that the fees in the schedule must be paid by institutions, out-of-state banks, national banks, and foreign banks.

## Cease and Desist: Injunction

Under the Code, if, in the FIB Commissioner's opinion, any institution is engaging or has engaged in an unsafe or unsound practice or is violating or has violated a law or rule, or if the Commissioner has reasonable cause to believe that an institution is about to engage in an unsafe or unsound practice or violate a rule or law, the Commissioner may issue and serve upon the institution a notice of charges. After a hearing, the Commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation.

The bill deleted a provision that, within 10 days after an institution had been served with a temporary cease and desist order, the institution could apply to the circuit court for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of administrative proceedings under the notice of charges served upon the institution.

## Acting as a Fiduciary

The Code previously specified that a corporation acting as a fiduciary could do so only if the corporation were one of the following:

- A bank or State foreign bank branch authorized to exercise trust powers under the 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 November 29, 1995.
- An out-of-state bank that is authorized to exercise trust powers under the law of the state in which 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.

The bill generally retains these provisions, but specifies that an out-of-state bank authorized to

exercise trust powers under another state's laws may act as a fiduciary, provided that the laws of the state, District of Columbia, territory, or protectorate of the United States under which it is chartered allow a bank to exercise trust powers in its jurisdiction. Similarly, a national bank authorized to exercise trust powers under the National Bank Act may act as a fiduciary, provided that the national bank is located in Michigan, or, if the national bank is located in another state, the District of Columbia, or a U.S. territory or protectorate, the laws where the national bank is located allow a bank to exercise trust powers in that jurisdiction. A national bank authorized to exercise trust powers under the bill may do so only to the extent that a bank may exercise trust powers under the Code.

## Notification of FIB Commissioner

Previously, a bank that purchased one or more branches under the Code had to obtain the FIB Commissioner's approval before operating the purchased branch or branches. Under the bill, a bank must provide notice to the Commissioner, rather than obtain his or her approval.

Similarly, the Code allowed a bank to establish and operate a branch or branches within any state, the District of Columbia, or a U.S. territory or protectorate, with the FIB Commissioner's written approval. Also, with the Commissioner's written approval, a bank could contract with one or more banks, out-of-state banks, national banks, associations, or savings banks to act as a branch to provide services to the customers of the contracting bank. The Commissioner's written approval also was required for one or more out-of-state banks, national banks, associations, or savings banks to contract with a Michigan bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank. For all of these actions, the bill requires written notice to the Commissioner, rather than his or her written approval, and specifies that the action may be taken unless the Commissioner objects in writing within 60 days after receiving the notice. The Commissioner may issue a written statement of intent not to object at any time before the expiration of the 60 days.

Within five days after an objection is issued, an institution that is dissatisfied with the objection may file a request for reconsideration. Within 10 days of receiving the request, the Commissioner must render a decision on it. If a petition for reconsideration is granted, the applicant and interested parties may file briefs and the

Commissioner may conduct an oral argument. The Commissioner must issue a final objection or withdrawal of an objection within 20 days after granting the petition for reconsideration.

Under the Code, a branch of a bank, except for a mobile branch, could not be moved from one location to another without the Commissioner's written approval. Under the bill, a 30-day advance notice to the Commissioner, rather than his or her written approval, is required. The bill deleted a provision prohibiting the Commissioner from requiring advance notice of, or a schedule showing, the location of a mobile branch.

#### Bank Holding Company Agreements

Under a section of the Code that was repealed by Public Act 202 of 1995 (which amended the Code to authorize interstate bank branching), multistate bank holding companies entered into written agreements to abide by Michigan law regarding loans made in Michigan to Michigan residents. The bill specifies that these written agreements remain in effect with regard to actions taken and events occurring on or before November 29, 1995 (the effective date of Public Act 202). A cause of action may not accrue under one of those agreements for an action taken or event occurring after November 29, 1995.

#### Resident Agents

The bill requires that each out-of-state bank, foreign bank, and national bank operating in Michigan designate and maintain an agent, located in Michigan, upon whom process for judicial and administrative matters may be served. Each out-of-state bank, foreign bank, and national bank must provide written notice containing the agent's name and address to the FIB Commissioner before it commences operations in Michigan. Each out-of-state bank, foreign bank, and national bank operating in Michigan must notify the Commissioner in writing of any change in its designated agent or the agent's address, within 10 days following the effective date of the change.

In addition, before commencing operations at a branch in Michigan, an out-of-state bank or national bank must file with the Commissioner the name of the bank; the street address and mailing address, if different, of the bank's principal office; the street address of the branch office; and the date when the branch is to begin operations in Michigan.

#### Discontinuance of Operations

The Code provides that, if a bank permanently discontinues the operations of any branch, all bills, checks, and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given, and similar functions must be considered transferable to, and treated as part of, the bank's principal office. Notices of the date on which operations will discontinue must be posted conspicuously and continuously in the office lobby of the branch to be discontinued at least 14 days before the discontinuance. The bill includes the discontinuance of operations of a foreign bank branch in these requirements, and deleted a requirement that notice of the discontinuance of operations also be posted at a bank's principal office.

The bill also specifies that each out-of-state bank or national bank must notify the FIB Commissioner in writing as to the effective date of the discontinuance of operations of any of its branch offices in Michigan at least 14 days before discontinuance.

#### Real Estate Brokerage

The bill added Section 151j to the Banking Code to allow a bank to do either of the following:

- Engage directly in the real estate brokerage business as provided under Article 25 of the Occupational Code.
- Own in whole or in part a real estate brokerage business as provided under the Occupational Code.

A bank that performs either of those activities must provide written notice of its licensure as a real estate broker or its ownership of a real estate brokerage business to the Commissioner within 10 days of licensure or ownership. The notice must include the name and business address of the brokerage.

A bank that engages directly in the real estate brokerage business or owns a real estate brokerage business may not do any of the following:

- Impose a requirement that a borrower contract for or enter into any other arrangement for real estate brokerage services with a particular broker.
- Impose a requirement that as a condition of approving a loan, a borrower contract or enter into any other arrangement for real estate brokerage services.

- Impose a requirement that a condition of providing real estate brokerage services is that the customer apply for a loan or any other arrangement for other services of the bank or any of its subsidiaries, agencies, or service entities.
- Offer or provide more favorable consideration, terms, or conditions for any financial products or services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage services with any particular real estate broker.
- Offer or provide more favorable terms or conditions for any real estate brokerage services to induce or attempt to induce a person to apply for a loan or obtain any other services of a particular bank or any of its subsidiaries, agencies, or service entities.
- Perform any other activity prohibited by order or declaratory ruling of the Commissioner.

A bank that engages directly in the real estate brokerage business or owns a real estate brokerage business must clearly disclose in writing to any person who applies for credit related to a real estate transaction or applies for prequalification or preapproval for credit related to a real estate transaction, that the person is not required to contract for or enter into an arrangement for real estate brokerage services with a particular real estate broker. Compliance with this disclosure requirement is not necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

A real estate brokerage that is affiliated with a bank must clearly disclose in writing, before the time an agency agreement for real estate brokerage services is executed, that the person is not required to apply, contract out, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, agencies, or service entities.

Neither of these disclosure requirements applies when the person has been given the controlled business arrangement disclosure statement required by the Real Estate Settlement Procedures Act.

If the Commissioner finds that a bank has violated Section 151j, he or she may issue an order requiring the bank to cease and desist the activity that violates this section. If the Commissioner also finds that the violation was knowingly committed, he or she may order a civil fine of up to \$500 for

each violation but not more than an aggregate civil penalty of \$10,000; or that restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of Section 151j. An action under this section may not be brought more than three years after the occurrence of the violation that is the basis of the action.

The Code provides that a bank may invest up to 5% of its total assets in one or more service corporations. "Service corporation" is defined, in part, as a corporation organized under the laws of any state that engages in activities determined by the Commissioner to be incidental to the conduct of a banking business. The bill deleted a provision that prohibited the Commissioner from determining that third party real estate brokerage services were incidental to the conduct of a banking business, but permitted the Commissioner to determine that real estate brokerage services provided to the bank or an affiliate or subsidiary of the bank for property owned by or in which the bank, subsidiary, or affiliate had an interest, were incidental to the conduct of a banking business.

MCL 487.325 et al.

Legislative Analyst: P. Affholter  
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### **FISCAL IMPACT**

This bill allows the Financial Institutions Bureau Commissioner to establish a fee schedule for out-of-state banks, national banks, and foreign banks. These fees will increase the amount of revenue coming in to the Bureau but will be used to cover the increased administrative costs associated with adding these three new types of banks to the fee schedule.

This bill also requires that the Commissioner be notified of certain actions, as opposed to the former approval process. This change will reduce revenue as the application fee applied to banks seeking various approvals will no longer be collected. The notification requirement will reduce the administrative responsibilities of the Bureau, so there will be no fiscal impact.

Fiscal Analyst: M. Tyszkiewicz

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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.