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BILL ANALYSIS



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Senate Bill 1018 (as introduced 5-14-96)
Sponsor: Senator Loren Bennett
Committee: Financial Services

Date Completed: 5-14-96

CONTENT

The bill would amend the Banking Code's interstate branching provisions to do all of the following:

- Specify that the Financial Institutions Bureau (FIB) Commissioner's schedule of fees would apply 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.

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 would have to 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 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 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 would delete a provision that, within 10 days after an institution has been served with a temporary cease and desist order, the institution may 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 specifies that a corporation acting as a fiduciary may do so only if the corporation is 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.

Under the bill, an out-of-state bank authorized to exercise trust powers under another state's laws could act as a fiduciary, provided that the laws of the state, District of Columbia, territory, or protectorate of the United States under which it was chartered allowed a bank to exercise trust powers in its jurisdiction. Similarly, a national bank authorized to exercise trust powers under the National Bank Act could act as a fiduciary, provided that the national bank was located in Michigan,

or, if the national bank were located in another state, the District of Columbia, or a U.S. territory or protectorate, the laws where the national bank was located allowed a bank to exercise trust powers in that jurisdiction. A national bank authorized to exercise trust powers under the bill could do so only to the extent that a bank may exercise trust powers under the Code.

Notification of FIB Commissioner

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

Similarly, the Code allows 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 may 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 is 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 would require written notice to the Commissioner, rather than his or her written approval, and specifies that the action could be taken unless the Commissioner objected in writing within 60 days after receiving the notice. The Commissioner could issue a written statement of intent not to object at any time before the expiration of the 60 days.

Under the Code, a branch of a bank, except for a mobile branch, cannot 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, would be required. The bill would delete 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 would 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 could not accrue under one of those agreements for an action taken or event occurring after November 29, 1995.

Resident Agents

The bill would require 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 could be served. Each out-of-state bank, foreign bank, and national bank would have to provide written notice containing the agent's name and address to the FIB Commissioner before it commenced operations in Michigan. Each out-of-state bank, foreign bank, and national bank operating in Michigan would have to 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 would have to 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 was to begin operations in Michigan.

Discontinuance of Operations

The Code requires 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 lobbies of both the branch to be discontinued and the bank's principal office at least 14 days before the discontinuance. The bill would include the discontinuance of operations of a foreign bank branch in these requirements and would delete the requirement that notice of the discontinuance of operations be posted at the principal office.

The bill also specifies that each out-of-state bank or national bank would have to 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.

MCL 487.325 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

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

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.