

Act No. 288
Public Acts of 1996
Approved by the Governor
June 15, 1996
Filed with the Secretary of State
June 17, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Randall, Middaugh, Alley, Kaza, Lowe, Kukuk, Gernaat, Perricone and Jaye

ENROLLED HOUSE BILL No. 5872

AN ACT to amend sections 91, 159, 181a, and 228 of Act No. 319 of the Public Acts of 1969, entitled as amended "An act to revise and codify the laws relating to banks, industrial banks, foreign banks, trust companies, and safe and collateral deposit companies; to provide for their incorporation, regulation, and supervision; to authorize the granting of trust powers to banks and to regulate the exercise of those powers; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," section 159 as amended by Act No. 399 of the Public Acts of 1994 and section 181a as amended by Act No. 202 of the Public Acts of 1995, being sections 487.391, 487.459, 487.481a, and 487.528 of the Michigan Compiled Laws; and to add sections 199 and 246.

The People of the State of Michigan enact:

Section 1. Sections 91, 159, 181a, and 228 of Act No. 319 of the Public Acts of 1969, section 159 as amended by Act No. 399 of the Public Acts of 1994 and section 181a as amended by Act No. 202 of the Public Acts of 1995, being sections 487.391, 487.459, 487.481a, and 487.528 of the Michigan Compiled Laws, are amended and sections 199 and 246 are added to read as follows:

Sec. 91. (1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank.

(2) At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by the shareholder. A shareholder may vote at any meeting of the bank by proxy in writing signed by the shareholder.

(3) A bank may provide in the initial articles of incorporation or by amendment to the articles by a vote of shareholders owning a majority of the total number of shares of each class of its outstanding capital stock, that in an election of directors each shareholder may cast as many votes as the number of shares owned by the shareholder multiplied by the number of directors to be elected. In the shareholder's discretion, the shareholder may distribute their total number of votes cumulatively for 1 or more of the candidates.

(4) A person holding shares of the capital stock of a bank in a fiduciary capacity shall be entitled to vote the shares unless the trust instrument contains a provision to the contrary. A person whose shares are pledged shall be entitled to vote unless in the transfer by the pledgor on the books of the bank, he or she has expressly empowered the pledgee to vote the shares, in which case only the pledgee or his or her proxy may vote the shares.

(5) A shareholder shall not vote his or her stock except in person or by proxy. This prohibition does not apply to a voting trust agreement of shareholders with respect to the voting of stock, if the agreement has been approved by the commissioner.

Sec. 159. (1) Except for its own capital stock or the capital stock of an affiliate of the bank, a bank shall not engage in a transaction with respect to shares of the capital stock of a corporation unless specifically authorized by this act or by the commissioner under this act.

(2) A bank may purchase and sell securities and stock upon the order of and for the account of a customer without recourse.

(3) A bank shall not make a loan on or discount the security of the shares of its own capital stock unless the security is necessary to prevent loss upon a debt previously contracted in good faith.

Sec. 181a. (1) As used in this section:

(a) "Host bank" means a bank, national bank, association, savings bank, or other legal entity for which trust services are provided by any other bank, out-of-state bank, national bank, association, or savings bank.

(b) "Trust service provider" means a bank or national bank providing trust services to any other bank, out-of-state bank, national bank, association, savings bank, or other legal entity.

(c) "Banking office" means a main office or authorized branch of a bank, out-of-state bank, national bank, association, or savings bank.

(2) A bank granted full trust powers may contract by written agreement with any other legal entity to carry on trust services in its name and for its account at 1 or more of the offices of the other legal entity.

(3) A bank may contract by written agreement with any other legal entity exercising full trust powers to carry on trust services at 1 or more of its banking offices but in the name and for the account of the other legal entity.

(4) An agreement provided for in this section, including any lease, or a modification or extension of an agreement, is not effective as to the bank until it is approved in writing by the commissioner. The commissioner may approve or disapprove the agreement based on the sufficiency of the capital and surplus of the bank and other facts or circumstances that the commissioner considers proper.

(5) Thirty days after a host bank mails a notice of substitution as provided in subsection (6), a trust service provider shall be substituted for a host bank as fiduciary or agent and succeed to the title of assets held by a host bank in a fiduciary capacity for each account in which the host bank, under the terms of a trust service agreement approved by the commissioner, will no longer serve as fiduciary or agent. A trust service provider shall not be substituted for the host bank for an account in which the recipient of a notice of substitution objects to the substitution in the manner provided in subsection (6).

(6) For each account in which a trust service provider is substituted for a host bank under the terms of a trust service agreement, a written notice of substitution shall be sent by the host bank by certified mail. The notice of substitution shall include the date the notice was mailed and explain that the trust service provider will not be substituted for the host bank for the account if the recipient of the notice sends a written objection to the host bank by first-class mail within 30 days after the date the notice was mailed. The notice of substitution shall be sent to the following:

(a) For employee benefit plans, to the plan sponsors.

(b) For individual retirement accounts and retirement accounts for the self-employed, to the account owners.

(c) For agency and escrow accounts, to the principals.

(d) For securities for which a host bank serves as trustee, registrar, transfer agent, or paying agent, to the issuers.

(e) For revocable trusts under agreement, to the settlors.

(f) For irrevocable trusts under agreement, to any co-fiduciary, to the settlor, to each current income beneficiary who is an adult, and, if a current income beneficiary is a minor, to a parent of the minor with whom the minor resides or to the conservator or guardian of the minor. The notice to the settlor shall not grant to the settlor any authority over the trust or trustee that the settlor does not already have, including the authority to object to the substitution of a trust service provider for a host bank. For purposes of this subdivision, "current income beneficiary" means a person currently entitled to income or a person to whom the trustee, in the trustee's discretion, may pay principal or income.

(g) For testamentary trusts, to the persons notified under subdivision (f) and to the probate court that appointed the host bank as trustee.

(h) For conservatorships, to any co-fiduciary, to the protected person for whom the conservatorship was created or, if the conservatorship was created for a minor, to a parent of the minor with whom the minor resides or to the guardian of the minor, and to the probate court that appointed the host bank as conservator.

(i) For guardianships, to any co-fiduciary, to the minor or legally incapacitated person for whom the guardian was appointed if the ward is at least 14 years of age, and to the probate court that appointed the host bank as guardian.

(j) For probate estates, to any co-fiduciary, to any interested party as defined by section 7 of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.7 of the Michigan Compiled Laws, and to the probate court that appointed the host bank as personal representative.

(7) Subsections (1), (5), and (6) apply to trust service agreements in effect on or after December 6, 1985.

Sec. 199. (1) One or more individuals may open a savings or checking account with a bank in the names of 2 or more minor or adult individuals. The savings or checking account contract shall do all of the following:

(a) Designate that the money on deposit in the account may be withdrawn by 1 or more of the depositors during the lifetimes of all of them.

(b) Specify that the account and all additions to the account shall be the property of the depositors as joint tenants, tenants by the entireties, or as tenants in common.

(2) If specification is not made in the savings or checking account contract concerning the nature of the joint tenancy created, the account and all additions to the account shall be the property of the persons as joint tenants, and in the absence of fraud or undue influence, the opening of an account shall be conclusive evidence in an action or proceeding of the intention of all parties to the account to vest title to the account and all additions to the account in the survivor.

(3) The power of the depositors, or any 1 or more of them to obtain substitute evidence of the savings or checking account or a substituted account upon loss or destruction of the evidence of ownership of the account, to pledge the account in whole or in part, and to execute a power of attorney with respect to the account shall be coextensive with the right of the depositors to make withdrawals from the account during the time all depositors to the account are living.

Sec. 228. Subject to section 193, all savings deposits shall be repaid to the depositor, or his or her lawful representatives, at such time, with such interest, and under such regulations as the board of directors of the bank may prescribe.

Sec. 246. (1) An officer or the board of directors of a bank may appoint a compliance review committee to evaluate loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, compliance with the bank's policies, compliance with federal or state statutory or regulatory requirements, or other related matters.

(2) Any documents, data, compilations, analyses, or other information and material gathered, generated, created, produced, developed, or prepared by or for a compliance review committee by 1 or more employees of the bank or by 1 or more other persons retained by the bank to assist the compliance review committee in performing its functions shall be considered compliance review material.

(3) A document, compilation, analysis, or item of information, data, or material remains compliance review material under this section even if it is delivered or disclosed to employees of the bank who are not members of the compliance review committee or to attorneys, accountants, auditors, consultants, or other professional advisers retained by the bank or to 1 or more other persons retained by the bank to assist the committee in performing its functions or to evaluate the committee.

(4) Except as provided in subsection (5), compliance review material is confidential and is not discoverable or admissible in evidence in any civil action.

(5) Subsection (4) does not apply to any information required by statute or regulation to be maintained by or provided to a governmental entity to the extent that law requires the governmental entity to disclose the information for discovery or admission into evidence.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.