

Act No. 405
Public Acts of 1996
Approved by the Governor
October 20, 1996
Filed with the Secretary of State
October 21, 1996

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

Introduced by Senators Bennett, Rogers and Bouchard

ENROLLED SENATE BILL No. 1018

AN ACT to amend sections 25, 30, 35, 51, 122, 151h, 171, and 174 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 25 as amended by Act No. 90 of the Public Acts of 1995 and sections 30, 35, 51, 151h, 171, and 174 as amended and section 122 as added by Act No. 202 of the Public Acts of 1995, being sections 487.325, 487.330, 487.335, 487.351, 487.422, 487.451h, 487.471, and 487.474 of the Michigan Compiled Laws; to add sections 123 and 151j; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 25, 30, 35, 51, 122, 151h, 171, and 174 of Act No. 319 of the Public Acts of 1969, section 25 as amended by Act No. 90 of the Public Acts of 1995 and sections 30, 35, 51, 151h, 171, and 174 as amended and section 122 as added by Act No. 202 of the Public Acts of 1995, being sections 487.325, 487.330, 487.335, 487.351, 487.422, 487.451h, 487.471, and 487.474 of the Michigan Compiled Laws, are amended and sections 123 and 151j are added to read as follows:

Sec. 25. (1) As determined by the commissioner, each bank shall pay an annual supervisory fee of not less than 4 cents nor more than 25 cents for each \$1,000.00 of the total assets of the bank as reported by the bank on its report of condition for the previous year. The supervisory fee for a bank that was a national bank or an association on December 31 of the previous year shall be based upon its total assets as reported by the bank in the report of condition for the previous year that was filed by the bank with its state of charter or federal regulator. The supervisory fee for a bank that was not engaged in the business of banking on December 31 of the previous year shall be the minimum supervisory fee established by the commissioner.

(2) The supervisory fee for a bank shall not be less than \$1,000.00.

(3) The commissioner shall invoice the supervisory fee no later than July 1 of each year and shall be paid by the bank no later than August 15 of that year.

(4) If a bank has paid a supervisory fee but is not examined by the commissioner during the calendar year, the bank shall receive a credit of not less than 30% nor more than 70% of the supervisory fee against its next succeeding annual supervisory fee. The percentage of the supervisory fee credit shall be determined annually by the commissioner and shall be the same for all banks.

(5) The commissioner shall periodically establish a schedule of fees to be paid by institutions, out-of-state banks, national banks, and foreign banks for examinations, evaluations, and applications considered necessary by the commissioner.

(6) The amount of a fee established under subsection (5) shall be equal to the estimated cost to the bureau of processing the examination, evaluation, or application for which the fee is imposed.

(7) The commissioner may charge reasonable fees for furnishing and certifying copies of documents filed in the bureau and the costs of publishing or serving of notices required by this act.

(8) If any fees or expenses provided for in this section are not paid by an institution, out-of-state bank, national bank, or foreign bank when due, the commissioner may, after proper notice to the institution, out-of-state bank, national bank, or foreign bank, maintain an action against the institution, out-of-state bank, national bank, or foreign bank for the recovery of the fees or expenses plus interest and costs.

(9) The fees and expenses collected under this section are not refundable and shall be paid into the state treasury to the credit of the bureau and used only for the operation of the bureau.

Sec. 30. (1) Except with respect to rules promulgated under section 19, a cease and desist order made under sections 35 to 46, an order made on an application seeking approval of the commissioner under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(32), 151h, or 157, or an objection issued under section 171, an institution or an interested party who is dissatisfied with an order, ruling, or finding issued by the commissioner may request a reconsideration of the order, ruling, or finding within 10 days after the issuance of the order, ruling, or finding. Within 30 days after the receipt of a written request for reconsideration, the commissioner shall set the matter down for a formal hearing unless a formal hearing has been held before the issuance of the order, ruling, or finding. The commissioner may conduct a formal hearing before the issuance of an order, ruling, or finding.

(2) A hearing held under subsection (1) shall be conducted pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(3) The commissioner shall require an entity making an application under section 53, 54, 121, 125, 130b, 141, 142, 144, 151(32), 151h, or 157 to give notice of the application by publication. The applicant, within 10 days after the acceptance of an application, shall publish notice in a newspaper or newspapers of general circulation in the community or communities in which the bank, branch, state foreign bank branch, state agency, or additional office of a state foreign bank branch or state agency, is to be located and in which the bank, banks, bank holding company, state foreign bank branch, or state agency involved in the subject application are located. Publication shall be in the form prescribed by the commissioner and be 1 time per week for 2 consecutive weeks with an interval between publications of not less than 5 days. Proof of publication shall be filed with the commissioner within 10 days after the date of the second publication of notice.

(4) An interested party who desires to protest the application shall file a written notice of protest with the commissioner and with the applicant within 10 days after the date of the second publication of notice. Within 30 days after the date of the second publication of notice, an interested party who has filed a written notice of protest shall file with the commissioner and with the applicant, a written statement setting forth all of the following:

(a) A list of specific items in the application which are the basis for the protest and an explanation of the reasons for the protest.

(b) A statement of the facts supporting the reasons for the protest including economic and financial data.

(c) A request for oral argument if desired.

(5) Within 40 days after the date of the second publication of notice, the applicant may file with the commissioner and with the parties that have filed written notice of protest, written material in response to the written statement and may request oral argument before the commissioner if oral argument has not been requested by an interested party who has filed a written notice of protest.

(6) Oral argument may be held at the commissioner's discretion if neither the applicant nor an interested party requests oral argument.

(7) An oral argument, if scheduled as provided in this section, shall be held within 55 days after the date of the second publication of notice.

(8) Only the applicant and those interested parties who have filed written statements under subsection (4) may participate in the oral argument. Oral argument may be made by each party or by an authorized representative. Oral argument shall be limited to issues raised in the materials submitted in connection with the application and the protest. One hour shall be permitted to each participant other than the applicant for oral argument. The applicant shall have as much time as all other participants have been permitted. The commissioner shall have a stenographic record made of the oral argument, with costs to be allocated equally among the parties requesting oral argument unless otherwise provided by rule of the commissioner.

(9) The commissioner shall issue an order within 100 days after the filing of the application. If an application is denied, or if a protested application is approved, the commissioner shall provide a detailed written explanation of the basis of the commissioner's decision. Appeal of an order shall not be made by a party without first requesting a reconsideration of the order under subsection (10).

(10) The applicant or an interested party who filed written statements under subsection (4) and who participated in the oral argument, if held, who is dissatisfied with an order of the commissioner or an institution that is dissatisfied with an objection issued under section 171, may within 5 days after the issuance of the order or objection file with the commissioner a written request for reconsideration of the order or objection stating the reasons for the request. The commissioner, within 10 days of receiving the request for reconsideration, shall render a decision on the request for reconsideration. If a petition for reconsideration is granted, the commissioner shall grant the applicant and all interested parties 10 days to file written arguments or briefs. The commissioner may conduct an oral argument after granting a petition for reconsideration. The argument shall be held within 10 days after granting the petition. The commissioner shall issue a final order, objection, or withdrawal of an objection within 20 days after granting the petition for reconsideration.

(11) The commissioner may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, to provide the application procedure. The rules shall be consistent with this section.

Sec. 35. (1) If in the opinion of the commissioner any 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 the business of the institution 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, the commissioner may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the institution. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the commissioner finds that an unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from the practice or violation. The order 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 any such practice or violation.

(2) A cease and desist order becomes effective at the expiration of 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified in the order, and shall remain effective and enforceable as provided in the order, except to the extent it is stayed, modified, terminated, or set aside by action of the commissioner or a reviewing court.

(3) If the commissioner determines that an out-of-state bank branch located in this state is acting in violation of the laws of this state or that the activities of the branch are being conducted in an unsafe and unsound manner, the commissioner may undertake enforcement actions and proceedings as would be permitted if the branch were a bank. If the commissioner determines that a national bank is acting in violation of the laws of this state, the commissioner shall notify the comptroller of the currency and the Michigan attorney general.

Sec. 51. (1) A person shall not engage in the business of banking in this state unless authorized by this act, the laws of another state, the national bank act, chapter 106, 13 Stat. 99, the international banking act of 1978, or if engaged in the business of banking on the effective date of this act under authority of former Act No. 341 of the Public Acts of 1937.

(2) Except for acting as an escrow agent, only an individual or corporation may act as a fiduciary in this state. A corporation acting as a fiduciary may do so only if the corporation is 1 of the following:

(a) A bank authorized to exercise trust powers under this act, or authorized to conduct trust business in this state prior to November 29, 1995.

(b) A state foreign bank branch authorized to exercise trust powers under this act.

(c) An out-of-state bank, that is authorized to exercise trust powers under the law of the state where it is organized, 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 state, the District of Columbia, territory, or protectorate. An out-of-state bank authorized to exercise trust powers under this section may do so only to the extent a bank may exercise trust powers under this act.

(d) A national bank authorized to exercise trust powers under the national bank act, chapter 106, 13 Stat. 99, provided the national bank is located in this state, or, if the national bank is located in another state, the District of Columbia, or a territory or protectorate of the United States, the laws where the national bank is located allow a bank to exercise trust powers in that state, the District of Columbia, territory, or protectorate. A national bank authorized

to exercise trust powers under this section may do so only to the extent that a bank may exercise trust powers under this act.

(e) A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in this state by another statute of this state.

Sec. 122. (1) A bank may sell 1 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 would permit a bank to purchase 1 or more branches in that state of the purchasing depository institution.

(2) A bank may purchase 1 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.

(3) A bank that purchases 1 or more branches under subsection (2) shall provide notice to the commissioner under section 171 before operating the purchased branch or branches.

Sec. 123. A written agreement entered into under former section 130b shall remain in effect with regard to actions taken and events occurring on or before November 29, 1995. A cause of action shall not accrue under such an agreement for an action taken or event occurring after November 29, 1995.

Sec. 151h. (1) A bank may invest, in aggregate not more than 5% of the bank's total assets in 1 or more service corporations. An investment under this subsection is subject to limitations and approvals established by rules promulgated by the commissioner.

(2) As used in this section, "service corporation" means a corporation organized under the laws of any state that engages in activities determined by the commissioner by order or rule to be incidental to the conduct of a banking business as provided in this act or activities that further or facilitate the corporate purposes of a bank, or that furnishes services to a bank, out-of-state bank, national bank, association, or savings bank, or subsidiaries or affiliates, the voting stock of which is owned directly or indirectly by 1 or more banks, out-of-state banks, national banks, associations, or savings banks.

(3) To implement this section, the commissioner may promulgate rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In the alternative the commissioner may issue orders under section 30(3) to (10) on applications by 1 or more banks for a determination that a proposed activity is permitted by this section.

(4) The commissioner, on at least a quarterly basis, shall give notice to all banks of any rules, orders, or determinations issued under this section.

Sec. 151j. (1) A bank may do either of the following:

(a) Engage directly in the real estate brokerage business as provided under article 25 of the occupational code, Act No. 299 of the Public Acts of 1980, being sections 339.2501 to 339.2578 of the Michigan Compiled Laws.

(b) Own in whole or in part a real estate brokerage business as provided under Act No. 299 of the Public Acts of 1980.

(2) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall 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 required by this subsection shall include the name and business address of the real estate brokerage.

(3) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business shall not do any of the following:

(a) Impose a requirement, verbally or in writing, that a borrower must contract for or enter into any other arrangement for real estate brokerage services with a particular real estate broker.

(b) Impose a requirement, verbally or in writing, that as a condition of approving a loan a borrower shall contract or enter into any other arrangement for real estate brokerage services.

(c) Impose a requirement, verbally or in writing, that a real estate brokerage customer shall make application for a loan or any other service or services of a particular bank or any of its subsidiaries, agencies, or service entities.

(d) Impose a requirement, verbally or in writing, that a condition of providing real estate brokerage services is that the customer shall make an application for a loan or any other arrangement for other services of the bank or any of its subsidiaries, agencies, or service entities.

(e) 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.

(f) 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.

(g) Any other activity prohibited by order or declaratory ruling of the commissioner.

(4) A bank that engages directly in the real estate brokerage business or owns in whole or in part a real estate brokerage business under this section shall 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 the disclosure requirements of this subsection shall not be necessary when a person applies for credit or prequalification for credit solely for the purpose of refinancing an existing indebtedness.

(5) A real estate brokerage that is affiliated with a bank shall 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 for, or enter into any other arrangement for services of a particular bank or any of its subsidiaries, agencies, or service entities.

(6) The requirements of subsections (4) and (5) do not apply when the person has been given the controlled business arrangement disclosure statement required by the real estate settlement procedures act of 1974, Public Law 93-533, 88 Stat. 1724.

(7) If the commissioner finds that a bank has violated this section, the commissioner may issue an order requiring the bank to cease and desist the activity that violates this section. If the commissioner additionally finds that the violation was knowingly committed, the commissioner may order any of the following:

(a) A civil fine of not more than \$500.00 for each violation but not to exceed an aggregate civil penalty of \$10,000.00.

(b) That restitution be made to a customer for actual damages directly attributable to the acts that are found to be a violation of this section.

(8) An action under this section shall not be brought more than 3 years after the occurrence of the violation that is the basis of the action.

Sec. 171. (1) Upon written notice to the commissioner, a bank may establish and operate a branch or branches within any state, the District of Columbia, or a territory or protectorate of the United States unless the commissioner objects in writing within 60 days after receipt of the written notice from the bank. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 60 days.

(2) The notice of intent to establish a mobile branch shall contain a statement by the applying bank that it intends to move the location of the physical structure of the branch from time to time.

(3) A branch of a bank, except for a mobile branch, shall not be moved from 1 location to another without 30 days advance written notice to the commissioner.

(4) Upon written notice to the commissioner, a bank may contract with 1 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 unless the commissioner objects in writing within 60 days after receipt of the written notice from the bank. The commissioner may issue a written statement of intent not to object at any time prior to the expiration of the 60 days. This subsection shall not be construed to limit the powers granted to a bank under section 151(31).

(5) Upon written notice to the commissioner, 1 or more out-of-state banks, national banks, associations, or savings banks may contract with a bank to provide services to the customers of the contracting out-of-state bank, national bank, association, or savings bank, unless the commissioner objects in writing within 60 days after receipt of the written notice. The commissioner may issue a written statement of intent not to object at any time before the expiration of the 60 days. This subsection shall not be construed to limit the powers granted to a bank under section 151(31).

(6) Subject to the requirements, limitations, and restrictions of subsections (1) to (3), a state agency or state foreign bank branch established and operating pursuant to chapter 3A may establish and operate additional offices in the United States and its territories and protectorates.

(7) An out-of-state bank located in a state, the District of Columbia, or a territory or protectorate of the United States whose laws permit the establishment in that state, district, territory, or protectorate of a branch by a bank may establish and operate 1 or more branches in this state.

(8) Each out-of-state bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(9) Each out-of-state bank operating in this state shall 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.

(10) A foreign bank branch that has designated a home state other than Michigan may establish and operate 1 or more additional offices in this state.

(11) Each foreign bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(12) A foreign bank operating in this state shall 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.

(13) Prior to commencing operations at a branch in this state, an out-of-state bank or national bank shall 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 commence operations in this state.

(14) Each out-of-state bank and national bank operating in this state shall designate and maintain an agent located in this state upon whom process for judicial and administrative matters may be served and shall provide written notice containing the name and address of its agent to the commissioner before commencing operations in this state.

(15) An out-of-state bank or national bank operating in this state shall 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.

Sec. 174. (1) If a bank or foreign bank permanently discontinues the operations of any branch or foreign bank 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 shall be deemed transferable to, and treated as a part of, the principal office of the bank or in the case of a foreign bank, the principal office in this country. Unless the branch to be discontinued is a mobile branch, notice of the date upon which the branch or foreign bank branch shall discontinue operations shall be posted conspicuously and continuously in the office lobby of the branch or foreign bank branch to be discontinued at least 14 days prior to discontinuance.

(2) Each out-of-state bank or national bank shall notify the commissioner in writing as to the effective date of the discontinuance of operations of any of its branch offices in this state at least 14 days before discontinuance.

Section 2. Section 211 of Act No. 319 of the Public Acts of 1969, being section 487.511 of the Michigan Compiled Laws, is repealed.

Section 3. Section 151j of Act No. 319 of the Public Acts of 1969, as added by this amendatory act, shall take effect November 1, 1996.

This act is ordered to take immediate effect.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.

