



SENATE BILL No. 1018

May 14, 1996, Introduced by Senators BENNETT, ROGERS and BOUCHARD and referred to the Committee on Financial Services.

A bill to amend sections 25, 30, 35, 51, 122, 171, and 174 of Act No. 319 of the Public Acts of 1969, entitled as amended "Banking code of 1969," section 25 as amended by Act No. 90 of the Public Acts of 1995 and sections 30, 35, 51, 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, 487.471, and 487.474 of the Michigan Compiled Laws; and to add section 123.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 25, 30, 35, 51, 122, 171, and 174 of
2 Act No. 319 of the Public Acts of 1969, section 25 as amended by
3 Act No. 90 of the Public Acts of 1995 and sections 30, 35, 51,
4 171, and 174 as amended and section 122 as added by Act No. 202
5 of the Public Acts of 1995, being sections 487.325, 487.330,

1 487.335, 487.351, 487.422, 487.471, and 487.474 of the Michigan
2 Compiled Laws, are amended and section 123 is added to read as
3 follows:

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

16 (2) The supervisory fee for a bank shall not be less than
17 \$1,000.00.

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

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

1 (5) The commissioner shall periodically establish a schedule
2 of fees to be paid BY INSTITUTIONS, OUT-OF-STATE BANKS, NATIONAL
3 BANKS, AND FOREIGN BANKS for examinations, evaluations, and
4 applications considered necessary by the commissioner.

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

9 (7) The commissioner may charge reasonable fees for furnish-
10 ing and certifying copies of documents filed in the bureau and
11 the costs of publishing or serving of notices required by this
12 act.

13 (8) If any fees or expenses provided for in this section are
14 not paid by ~~a bank~~ AN INSTITUTION, OUT-OF-STATE BANK, NATIONAL
15 BANK, OR FOREIGN BANK when due, the commissioner may, after
16 proper notice to the bank, maintain an action against the ~~bank~~
17 INSTITUTION, OUT-OF-STATE BANK, NATIONAL BANK, OR FOREIGN BANK
18 for the recovery of the fees or expenses plus interest and
19 costs.

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

24 Sec. 30. (1) Except with respect to rules promulgated under
25 section 19, a cease and desist order made under sections 35 to
26 46, and an order made on an application seeking approval of the
27 commissioner under section 53, 54, 121, 125, 130b, 141, 142, 144,

1 151(32), 151h, OR 157, ~~or 171~~, an institution or an interested
2 party who is dissatisfied with an order, ruling, OBJECTION, or
3 finding issued by the commissioner may request a reconsideration
4 of the order, ruling, or finding within 10 days after the issu-
5 ance of the order, ruling, or finding. Within 30 days after the
6 receipt of a written request for reconsideration, the commis-
7 sioner shall set the matter down for a formal hearing unless a
8 formal hearing has been held before the issuance of the order,
9 ruling, OBJECTION, or finding. The commissioner may conduct a
10 formal hearing before the issuance of an order, ruling,
11 OBJECTION, or finding.

12 (2) A hearing held under subsection (1) shall be conducted
13 pursuant to the administrative procedures act of 1969, Act
14 No. 306 of the Public Acts of 1969, being sections 24.201 to
15 24.328 of the Michigan Compiled Laws.

16 (3) The commissioner shall require an entity making an
17 application under section 53, 54, 121, 125, 130b, 141, 142, 144,
18 151(32), 151h, OR 157 ~~, or 171~~ to give notice of the applica-
19 tion by publication. The applicant, within 10 days after the
20 acceptance of an application, shall publish notice in a newspaper
21 or newspapers of general circulation in the community or communi-
22 ties in which the bank, branch, state foreign bank branch, state
23 agency, or additional office of a state foreign bank branch or
24 state agency, is to be located and in which the bank, banks, bank
25 holding company, state foreign bank branch, or state agency
26 involved in the subject application are located. Publication
27 shall be in the form prescribed by the commissioner and be 1 time

1 per week for 2 consecutive weeks with an interval between
2 publications of not less than 5 days. Proof of publication shall
3 be filed with the commissioner within 10 days after the date of
4 the second publication of notice.

5 (4) An interested party who desires to protest the applica-
6 tion shall file a written notice of protest with the commissioner
7 and with the applicant within 10 days after the date of the
8 second publication of notice. Within 30 days after the date of
9 the second publication of notice, an interested party who has
10 filed a written notice of protest shall file with the commis-
11 sioner and with the applicant, a written statement setting forth
12 all of the following:

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

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

18 (c) A request for oral argument if desired.

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

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

4 (7) An oral argument, if scheduled as provided in this sec-
5 tion, shall be held within 55 days after the date of the second
6 publication of notice.

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

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

26 (10) The applicant or an interested party who filed written
27 statements under subsection (4) and who participated in the oral

1 argument, if held, who is dissatisfied with an order of the
2 commissioner, may within 5 days after the issuance of the order
3 file with the commissioner a written request for reconsideration
4 of the order stating the reasons for the request. The commis-
5 sioner, within 10 days of receiving the request for reconsidera-
6 tion, shall render a decision on the request for
7 reconsideration. If a petition for reconsideration is granted,
8 the commissioner shall grant the applicant and all interested
9 parties 10 days to file written arguments or briefs. The commis-
10 sioner may conduct an oral argument after granting a petition for
11 reconsideration. The argument shall be held within 10 days after
12 granting the petition. The commissioner shall issue a final
13 order within 20 days after granting the petition for
14 reconsideration.

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

18 Sec. 35. (1) If in the opinion of the commissioner any
19 institution is engaging or has engaged, or the commissioner has
20 reasonable cause to believe that the institution is about to
21 engage, in an unsafe or unsound practice in conducting the busi-
22 ness of the institution or is violating or has violated, or the
23 commissioner has reasonable cause to believe that the institution
24 is about to violate, a law or rule, the commissioner may issue
25 and serve upon the institution a notice of charges in respect
26 thereof. The notice shall contain a statement of the facts
27 constituting the alleged unsafe or unsound practice or violation,

1 and shall fix a time and place at which a hearing will be held to
2 determine whether an order to cease and desist should issue
3 against the institution. The hearing shall be not earlier than
4 30 days nor later than 60 days after service of the notice unless
5 an earlier or a later date is set by the commissioner at the
6 request of the institution. Unless the institution appears at
7 the hearing by a duly authorized representative, it shall be
8 deemed to have consented to the issuance of the cease and desist
9 order. In the event of such consent, or if upon the record made
10 at the hearing, the commissioner finds that an unsafe or unsound
11 practice or violation specified in the notice of charges has been
12 established, the commissioner may issue and serve upon the insti-
13 tution an order to cease and desist from the practice or
14 violation. The order may require the institution and its direc-
15 tors, officers, employees, and agents to cease and desist from
16 the practice or violation and to take affirmative action to cor-
17 rect the conditions resulting from any such practice or
18 violation.

19 (2) A cease and desist order becomes effective at the expi-
20 ration of 30 days after the service of the order upon the insti-
21 tution, except in the case of an order issued upon consent which
22 shall become effective at the time specified in the order, and
23 shall remain effective and enforceable as provided in the order,
24 except to the extent it is stayed, modified, terminated, or set
25 aside by action of the commissioner or a reviewing court.

26 ~~(3) Within 10 days after the institution has been served~~
27 ~~with a temporary cease and desist order, the institution may~~

~~1 apply to the circuit court for the county in which the home
2 office of the institution is located for an injunction setting
3 aside, limiting, or suspending the enforcement, operation, or
4 effectiveness of the order pending the completion of the adminis-
5 trative proceedings under the notice of charges served upon the
6 institution under subsection (1).~~

7 (3) ~~(4)~~ If the commissioner determines that an
8 out-of-state bank branch located in this state is acting in vio-
9 lation of the laws of this state or that the activities of the
10 branch are being conducted in an unsafe and unsound manner, the
11 commissioner may undertake enforcement actions and proceedings as
12 would be permitted if the branch were a bank. If the commis-
13 sioner determines that a national bank is acting in violation of
14 the laws of this state, the commissioner shall notify the comp-
15 troller of the currency and the Michigan attorney general.

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

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

26 (a) A bank ~~or state foreign bank branch~~ authorized to
27 exercise trust powers under this act, ~~or a national bank~~

1 ~~authorized to exercise trust powers under the national bank act,~~
2 ~~chapter 106, 13 Stat. 99,~~ or authorized to conduct trust busi-
3 ness in this state prior to ~~the effective date of the act that~~
4 ~~added section 122-~~ NOVEMBER 29, 1995.

5 (B) A STATE FOREIGN BANK BRANCH AUTHORIZED TO EXERCISE TRUST
6 POWERS UNDER THIS ACT.

7 (C) ~~(b)~~ An out-of-state bank, that is authorized to exer-
8 cise trust powers under the law of the state where it is orga-
9 nized, PROVIDED THAT THE LAWS OF THE STATE, DISTRICT OF COLUMBIA,
10 TERRITORY, OR PROTECTORATE OF THE UNITED STATES UNDER WHICH IT IS
11 CHARTERED ALLOW A BANK TO EXERCISE TRUST POWERS IN ITS STATE, THE
12 DISTRICT OF COLUMBIA, TERRITORY, OR PROTECTORATE. AN
13 OUT-OF-STATE BANK AUTHORIZED TO EXERCISE TRUST POWERS UNDER THIS
14 SECTION MAY DO SO ONLY to the extent a bank may exercise trust
15 powers under this act.

16 (D) A NATIONAL BANK AUTHORIZED TO EXERCISE TRUST POWERS
17 UNDER THE NATIONAL BANK ACT, CHAPTER 106, 13 STAT. 99, PROVIDED
18 THE NATIONAL BANK IS LOCATED IN THIS STATE, OR, IF THE NATIONAL
19 BANK IS LOCATED IN ANOTHER STATE, THE DISTRICT OF COLUMBIA, OR A
20 TERRITORY OR PROTECTORATE OF THE UNITED STATES, THE LAWS WHERE
21 THE NATIONAL BANK IS LOCATED ALLOW A BANK TO EXERCISE TRUST
22 POWERS IN THAT STATE, THE DISTRICT OF COLUMBIA, TERRITORY, OR
23 PROTECTORATE. A NATIONAL BANK AUTHORIZED TO EXERCISE TRUST
24 POWERS UNDER THIS SECTION MAY DO SO ONLY TO THE EXTENT THAT A
25 BANK MAY EXERCISE TRUST POWERS UNDER THIS ACT.

1 (E) ~~(c)~~ A nonbanking corporation to the extent that it may
2 be specifically authorized to act as fiduciary in this state by
3 another statute of this state.

4 Sec. 122. (1) A bank may sell 1 or more of its branches,
5 without selling all or substantially all of the bank, to a bank,
6 out-of-state bank, national bank, association, or savings bank
7 located in a state whose laws would permit a bank to purchase 1
8 or more branches in that state of the purchasing depository
9 institution.

10 (2) A bank may purchase 1 or more branches, without purchas-
11 ing all or substantially all of the depository institution, from
12 a bank, out-of-state bank, national bank, association, or savings
13 bank.

14 (3) A bank that purchases 1 or more branches under
15 subsection (2) shall ~~obtain the commissioner's approval~~ PROVIDE
16 NOTICE TO THE COMMISSIONER under section 171 before operating the
17 purchased branch or branches.

18 SEC. 123. A WRITTEN AGREEMENT ENTERED INTO UNDER FORMER
19 SECTION 130B SHALL REMAIN IN EFFECT WITH REGARD TO ACTIONS TAKEN
20 AND EVENTS OCCURRING ON OR BEFORE NOVEMBER 29, 1995. A CAUSE OF
21 ACTION SHALL NOT ACCRUE UNDER SUCH AN AGREEMENT FOR AN ACTION
22 TAKEN OR EVENT OCCURRING AFTER NOVEMBER 29, 1995.

23 Sec. 171. (1) ~~With the written approval of~~ UPON WRITTEN
24 NOTICE TO the commissioner, a bank may establish and operate a
25 branch or branches within any state, the District of Columbia, or
26 a territory or protectorate of the United States UNLESS THE
27 COMMISSIONER OBJECTS IN WRITING WITHIN 60 DAYS AFTER RECEIPT OF

1 THE WRITTEN NOTICE FROM THE BANK. The commissioner ~~shall not~~
2 ~~grant approval unless the commissioner is satisfied as to the~~
3 ~~sufficiency of the capital and surplus of the bank and the pros-~~
4 ~~pects of successful operation if established~~ MAY ISSUE A WRITTEN
5 STATEMENT OF INTENT NOT TO OBJECT AT ANY TIME BEFORE THE EXPIRA-
6 TION OF THE 60 DAYS.

7 (2) ~~An application~~ THE NOTICE OF INTENT to establish a
8 mobile branch shall contain a statement by the applying bank that
9 it intends to move the location of the physical structure of the
10 branch from time to time. ~~A branch established pursuant to this~~
11 ~~subsection shall be considered a mobile branch from the date the~~
12 ~~branch is approved by the commissioner.~~

13 (3) A branch of a bank, except for a mobile branch, shall
14 not be moved from 1 location to another without ~~the written~~
15 ~~approval of~~ 30 DAYS ADVANCE WRITTEN NOTICE TO the commissioner.
16 ~~The commissioner shall not require advance notice of or a sched-~~
17 ~~ule showing the location of a mobile branch.~~

18 (4) ~~With the written approval of~~ UPON WRITTEN NOTICE TO
19 the commissioner, a bank may contract with 1 or more banks,
20 out-of-state banks, national banks, associations, or savings
21 banks to act as a branch to provide services to the customers of
22 the contracting bank ~~. The approval of the commissioner is not~~
23 ~~required for the powers granted to a bank~~ UNLESS THE COMMIS-
24 SIONER OBJECTS IN WRITING WITHIN 60 DAYS AFTER RECEIPT OF THE
25 WRITTEN NOTICE FROM THE BANK. THE COMMISSIONER MAY ISSUE A WRIT-
26 TEN STATEMENT OF INTENT NOT TO OBJECT AT ANY TIME PRIOR TO THE
27 EXPIRATION OF THE 60 DAYS. THIS SUBSECTION SHALL NOT BE

1 CONSTRUED TO LIMIT THE POWERS GRANTED TO A BANK under
2 section 151(31).

3 (5) ~~With the written approval of~~ UPON WRITTEN NOTICE TO
4 the commissioner, 1 or more out-of-state banks, national banks,
5 associations, or savings banks may contract with a bank to pro-
6 vide services to the customers of the contracting out-of-state
7 bank, national bank, association, or savings bank, UNLESS THE
8 COMMISSIONER OBJECTS IN WRITING WITHIN 60 DAYS AFTER RECEIPT OF
9 THE WRITTEN NOTICE. THE COMMISSIONER MAY ISSUE A WRITTEN STATE-
10 MENT OF INTENT NOT TO OBJECT AT ANY TIME BEFORE THE EXPIRATION OF
11 THE 60 DAYS. This subsection shall not be construed to limit the
12 powers granted to a bank under section 151(31).

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

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

23 (8) EACH OUT-OF-STATE BANK OPERATING IN THIS STATE SHALL
24 DESIGNATE AND MAINTAIN AN AGENT LOCATED IN THIS STATE UPON WHOM
25 PROCESS FOR JUDICIAL AND ADMINISTRATIVE MATTERS MAY BE SERVED AND
26 SHALL PROVIDE WRITTEN NOTICE CONTAINING THE NAME AND ADDRESS OF

1 ITS AGENT TO THE COMMISSIONER BEFORE COMMENCING OPERATIONS IN
2 THIS STATE.

3 (9) EACH OUT-OF-STATE BANK OPERATING IN THIS STATE SHALL
4 NOTIFY THE COMMISSIONER IN WRITING OF ANY CHANGE IN ITS DESIG-
5 NATED AGENT OR THE AGENT'S ADDRESS WITHIN 10 DAYS FOLLOWING THE
6 EFFECTIVE DATE OF THE CHANGE.

7 (10) ~~(8)~~ A foreign bank branch that has designated a home
8 state other than Michigan may establish and operate 1 or more
9 additional offices in this state.

10 (11) EACH FOREIGN BANK OPERATING IN THIS STATE SHALL DESIG-
11 NATE AND MAINTAIN AN AGENT LOCATED IN THIS STATE UPON WHOM PRO-
12 CESS FOR JUDICIAL AND ADMINISTRATIVE MATTERS MAY BE SERVED AND
13 SHALL PROVIDE WRITTEN NOTICE CONTAINING THE NAME AND ADDRESS OF
14 ITS AGENT TO THE COMMISSIONER BEFORE COMMENCING OPERATIONS IN
15 THIS STATE.

16 (12) A FOREIGN BANK OPERATING IN THIS STATE SHALL NOTIFY THE
17 COMMISSIONER IN WRITING OF ANY CHANGE IN ITS DESIGNATED AGENT OR
18 THE AGENT'S ADDRESS WITHIN 10 DAYS FOLLOWING THE EFFECTIVE DATE
19 OF THE CHANGE.

20 (13) PRIOR TO COMMENCING OPERATIONS AT A BRANCH IN THIS
21 STATE, AN OUT-OF-STATE BANK OR NATIONAL BANK SHALL FILE WITH THE
22 COMMISSIONER THE NAME OF THE BANK, THE STREET ADDRESS AND MAILING
23 ADDRESS, IF DIFFERENT, OF THE BANK'S PRINCIPAL OFFICE, THE STREET
24 ADDRESS OF THE BRANCH OFFICE, AND THE DATE WHEN THE BRANCH IS TO
25 COMMENCE OPERATIONS IN THIS STATE.

26 (14) EACH OUT-OF-STATE BANK AND NATIONAL BANK OPERATING IN
27 THIS STATE SHALL DESIGNATE AND MAINTAIN AN AGENT LOCATED IN THIS

1 STATE UPON WHOM PROCESS FOR JUDICIAL AND ADMINISTRATIVE MATTERS
2 MAY BE SERVED AND SHALL PROVIDE WRITTEN NOTICE CONTAINING THE
3 NAME AND ADDRESS OF ITS AGENT TO THE COMMISSIONER BEFORE COMMENC-
4 ING OPERATIONS IN THIS STATE.

5 (15) AN OUT-OF-STATE BANK OR NATIONAL BANK OPERATING IN THIS
6 STATE SHALL NOTIFY THE COMMISSIONER IN WRITING OF ANY CHANGE IN
7 ITS DESIGNATED AGENT OR THE AGENT'S ADDRESS WITHIN 10 DAYS FOL-
8 LOWING THE EFFECTIVE DATE OF THE CHANGE.

9 Sec. 174. (1) If a bank OR FOREIGN BANK permanently discon-
10 tinues the operations of any branch OR FOREIGN BANK BRANCH, all
11 bills, checks, and notes otherwise presentable for acceptance or
12 payment, all deposits to be made or withdrawn, all notices to
13 stop payment of checks to be given, and similar functions shall
14 be deemed transferable to, and treated as a part of, the princi-
15 pal office of the bank OR IN THE CASE OF A FOREIGN BANK, THE
16 PRINCIPAL OFFICE IN THIS COUNTRY. Unless the branch to be dis-
17 continued is a mobile branch, notice of the date upon which the
18 branch OR FOREIGN BANK BRANCH shall discontinue operations shall
19 be posted conspicuously and continuously in the office ~~lobbies~~
20 LOBBY of ~~both~~ the branch OR FOREIGN BANK BRANCH to be discon-
21 tinued ~~and the principal office of the bank~~ at least 14 days
22 prior to discontinuance.

23 (2) EACH OUT-OF-STATE BANK OR NATIONAL BANK SHALL NOTIFY THE
24 COMMISSIONER IN WRITING AS TO THE EFFECTIVE DATE OF THE DISCON-
25 TINUANCE OF OPERATIONS OF ANY OF ITS BRANCH OFFICES IN THIS STATE
26 AT LEAST 14 DAYS BEFORE DISCONTINUANCE.