

HOUSE BILL No. 6299

June 29, 2006, Introduced by Rep. David Law and referred to the Committee on Banking and Financial Services.

A bill to amend 1999 PA 276, entitled
 "Banking code of 1999,"
 by amending sections 4401 and 4405 (MCL 487.14401 and 487.14405).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4401. (1) Upon application, the commissioner may grant to
 2 any bank or state foreign bank branch ~~full~~ trust powers ~~,~~ as
 3 provided in this section, ~~but~~ subject to the conditions,
 4 limitations, and restrictions in this act. ~~, except that~~

5 **(2) THE COMMISSIONER SHALL NOT GRANT** trust powers ~~shall not~~
 6 ~~be granted~~ to a state agency.

7 **(3) ~~(2) Upon approval of the~~ IF THE COMMISSIONER APPROVES AN**
 8 application **DESCRIBED IN SUBSECTION (1)**, the bank or state foreign
 9 bank branch ~~shall have~~ **HAS** the power to conduct a trust business.
 10 ~~including, but not by way of limitation,~~ **THIS POWER INCLUDES, BUT**

1 **IS NOT LIMITED TO**, all of the following:

2 (a) In ~~and by~~ its corporate name, to take, receive, hold,
3 repay, reconvey, and dispose of any effects and property, both real
4 and personal, that ~~may be~~ **ARE** granted, committed, transferred, or
5 conveyed to it with its consent, ~~upon any terms or upon any~~
6 **ACCORDING TO THE TERMS OF ANY AGREEMENT OR** trust, at any time, by
7 any ~~person, including minors, bodies~~ **INDIVIDUAL, MINOR**, corporate
8 **BODY**, ~~or by any~~ court, **OR ANY OTHER PERSON** and to administer,
9 fulfill, and discharge the duties of the trust. ~~for the~~
10 ~~remuneration as agreed upon.~~

11 (b) To act as agent for the transaction of business, the
12 management of estates, the collection of rents, interest,
13 dividends, and money, and the collection of principal and interest
14 on mortgages, bonds, notes, and securities for money; ~~and~~ to
15 enforce the payment ~~thereof, and also~~ **OF ANY OF THESE**
16 **OBLIGATIONS**; to act as agent for the purpose of issuing,
17 negotiating, registering, transferring, or countersigning the
18 certificates of stock, bonds, or other obligations of any
19 corporation, association, or municipality; and to manage any
20 sinking fund of any corporation, association, or municipality on
21 the terms ~~as agreed upon~~ **TO WHICH THE PARTIES HAVE AGREED.**

22 (c) To accept and to execute the ~~offices~~ **OFFICE** of personal
23 representative, trustee, receiver, conservator, liquidating agent,
24 assignee, or guardian of any minor, incompetent person, legally
25 incapacitated person, or any **OTHER** person subject to guardianship.
26 ~~In all cases when~~ **IF AN** application is made to a court for the
27 appointment of a trustee, receiver, personal representative, or

1 guardian of any minor, incompetent person, legally incapacitated
2 person, or any other person subject to guardianship, the court may
3 appoint the bank or state foreign bank branch, with its consent, to
4 hold ~~the~~ **THAT** office. The accounts of ~~the~~ **A** bank or state
5 foreign bank branch as trustee, receiver, conservator, liquidating
6 agent, assignee, personal representative, or guardian shall be
7 regularly settled and adjusted by the proper office or tribunals.
8 All proper, legal, usual, and customary charges, costs, and
9 expenses shall be allowed to the bank or state foreign bank branch
10 for the care and management of ~~the~~ **AN** estate ~~so~~ committed to it
11 **UNDER THIS SECTION.** ~~In case of appointment~~ **IF APPOINTED** by any
12 court, ~~the~~ **A** bank or state foreign bank branch ~~shall not be~~ **IS**
13 **NOT** required to give any security except in the discretion of the
14 court. If the court orders the bank or state foreign bank branch to
15 give security, the security shall be a bond in an amount fixed by
16 the court and with a surety company authorized to do business in
17 this state, or with personal surety or sureties on the bond
18 satisfactory to the court.

19 (d) ~~To~~ **SUBJECT TO LAW, TO** exercise by its board of directors
20 or authorized officers or agents ~~, subject to law,~~ all incidental
21 powers ~~as are~~ necessary to carry on a trust business.

22 (e) A bank or state foreign bank branch acting as a fiduciary
23 may charge a reasonable fee for its services. **IN ANY ACTION OR**
24 **PROCEEDING CONCERNING FEES, THERE IS A REBUTTABLE PRESUMPTION THAT**
25 **A FEE IS REASONABLE IF THE FEE OR ITS METHOD OF COMPUTATION IS**
26 **SPECIFIED IN A FEE SCHEDULE OR FEE AGREEMENT OF THE BANK OR STATE**
27 **FOREIGN BANK BRANCH IN EFFECT AT THE TIME THE SERVICE IS PROVIDED**

1 AND IF THE AGENCY OR CUSTODY PRINCIPAL, THE TRUST GRANTOR, OR ANY
2 PERSON OTHER THAN THE TRUST GRANTOR WHO IS ENTITLED TO BE KEPT
3 REASONABLY INFORMED OF THE TRUST AND ITS ADMINISTRATION UNDER
4 SECTION 7303 OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA
5 386, MCL 700.7303, RECEIVED REASONABLE NOTICE OF THAT FEE SCHEDULE
6 OR FEE AGREEMENT BEFORE THE FEE IS CHARGED.

7 Sec. 4405. (1) ~~Funds~~ **A BANK SHALL INVEST ANY MONEY** or
8 property held by ~~a~~ **THE** bank as fiduciary and available for
9 investment ~~shall be invested~~ at the time and in the manner
10 specified ~~by~~ **IN** the agreement, instrument, or order creating or
11 defining the trust or other capacity in which the bank is acting
12 or, ~~where~~ **IF** the bank holds the ~~funds~~ **MONEY** or property as
13 agent, as directed or permitted by the bank's principal. In the
14 absence of investment specifications or limitations in the
15 agreement, instrument, or order, ~~funds~~ **THE BANK SHALL INVEST ANY**
16 **MONEY** or property held by ~~a~~ **THE** bank as fiduciary ~~shall~~ within
17 a reasonable time ~~be invested~~ in real or personal property, of
18 whatever type or nature, ~~as~~ **THAT** a prudent investor would
19 purchase, taking into account the purposes, terms, and distribution
20 requirements expressed in the governing instrument, in the exercise
21 of reasonable care, skill, and caution under conditions existing at
22 the time of purchase. ~~Compliance~~ **A BANK'S COMPLIANCE** with the
23 prudent investor rule ~~shall be~~ **DESCRIBED IN THIS SUBSECTION IS**
24 determined in light of the facts and circumstances that exist at
25 the time of ~~a fiduciary's~~ **THE BANK'S** decision or action **AS A**
26 **FIDUCIARY** and requires a standard of conduct, not outcome or
27 performance.

1 (2) ~~Except as otherwise permitted by law, a court order, or~~
 2 ~~the agreement, instrument, or order creating or defining the trust,~~
 3 ~~or other capacity in which the bank is acting or with the consent~~
 4 ~~of all interested parties or their representatives, or where the~~
 5 ~~bank holds the funds or property as agent, as directed or permitted~~
 6 ~~by the bank's principal, funds or property held by a bank as~~
 7 ~~fiduciary shall not be invested~~ **A BANK SHALL NOT INVEST ANY MONEY**
 8 **OR PROPERTY HELD AS FIDUCIARY** in any securities or other
 9 properties, real or personal, purchased from the bank in its
 10 individual capacity or from any affiliate of the bank — **UNLESS 1**
 11 **OF THE FOLLOWING APPLIES:**

12 **(A) THE INVESTMENT IS OTHERWISE PERMITTED BY LAW, A COURT**
 13 **ORDER, OR THE AGREEMENT, INSTRUMENT, OR ORDER THAT CREATES OR**
 14 **DEFINES THE TRUST OR OTHER FIDUCIARY CAPACITY IN WHICH THE BANK IS**
 15 **ACTING.**

16 **(B) ALL INTERESTED PARTIES OR THEIR REPRESENTATIVES CONSENT TO**
 17 **THE INVESTMENT.**

18 **(C) THE BANK HOLDS THE MONEY OR PROPERTY AS AN AGENT AND THE**
 19 **BANK'S PRINCIPAL DIRECTS OR PERMITS THE INVESTMENT.**

20 (3) ~~Notwithstanding any other statutory or common law, except~~
 21 **EXCEPT** when the agreement, instrument, or order creating or
 22 defining the trust or other capacity in which the bank, or the bank
 23 and 1 or more cofiduciaries, is acting prohibits the investment **OR**
 24 **TRANSACTION**, a bank —, or a bank and 1 or more cofiduciaries —,
 25 may ~~invest~~ **DO ANY OF THE FOLLOWING WITH ANY MONEY OR PROPERTY**
 26 **OVER WHICH THE BANK OR THE BANK AND 1 OR MORE COFIDUCIARIES**
 27 **EXERCISES INVESTMENT DISCRETION:**

1 (A) INVEST THE MONEY OR PROPERTY in a registered investment
2 company ~~any funds or property with respect to which the bank, or~~
3 ~~the bank and 1 or more cofiduciaries, exercises investment~~
4 ~~discretion,~~ even though either or both of the following apply:

5 (i) ~~(a)~~ The bank or 1 or more affiliates of the bank provide
6 services as investment adviser, sponsor, distributor, manager,
7 custodian, transfer agent, registrar, or otherwise, to the
8 investment company and receives reasonable remuneration for those
9 services.

10 (ii) ~~(b)~~ The bank as fiduciary owns or controls a majority of
11 the voting shares of the investment company or a majority of the
12 shares voted for the election of its directors or trustees or the
13 bank as fiduciary otherwise controls the election of a majority of
14 ~~its~~ THE INVESTMENT COMPANY'S directors or trustees.

15 (B) WITH THE WRITTEN CONSENT OF THE REVOCABLE TRUST GRANTOR OR
16 AGENCY PRINCIPAL, OR IF THE TRUST IS IRREVOCABLE OR THE TRUST
17 GRANTOR IS DECEASED OR REASONABLY BELIEVED BY THE TRUSTEE TO BE
18 INCAPACITATED, AFTER PROVIDING ADVANCE NOTICE AT LEAST 45 DAYS
19 BEFORE THE USE OF THE MONEY OR PROPERTY TO ANY PERSON THEN ENTITLED
20 TO RECEIVE TRUST ACCOUNTINGS UNDER SECTION 7303 OF THE ESTATES AND
21 PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.7303, USE THE
22 MONEY OR PROPERTY TO PURCHASE ANY PRODUCT, SERVICE, OR SECURITY
23 FROM OR THROUGH THE BANK OR AN AFFILIATE OF THE BANK, INCLUDING,
24 BUT NOT LIMITED TO, AN INSURANCE PRODUCT OR A SECURITY THAT IS
25 UNDERWRITTEN OR DISTRIBUTED BY THE BANK OR AN AFFILIATE OF THE BANK
26 OR BY A SYNDICATE OR SELLING GROUP THAT INCLUDES THE BANK OR AN
27 AFFILIATE OF THE BANK, IF THE PURCHASE PRICE IS REASONABLE. ANY

1 ADVANCE NOTICE REQUIRED UNDER THIS SUBDIVISION SHALL LIST THE TYPE
2 OF PRODUCTS, SERVICES, OR SECURITIES AVAILABLE FOR PURCHASE FROM OR
3 THROUGH THE BANK OR AN AFFILIATE OF THE BANK AND SHALL PROVIDE THE
4 NAME AND ADDRESS OF AN INDIVIDUAL AT THE BANK TO WHOM A BENEFICIARY
5 RECEIVING THE NOTICE MAY DIRECT ANY OBJECTION. IF THE BANK RECEIVES
6 A WRITTEN OBJECTION TO A NOTICE PROVIDED UNDER THIS SUBDIVISION,
7 AND THE OBJECTION IS NOT RESOLVED OR WITHDRAWN, THE BANK SHALL NOT
8 USE THE MONEY OR PROPERTY TO PURCHASE ANY PRODUCT, SERVICE, OR
9 SECURITY FROM OR THROUGH THE BANK OR AN AFFILIATE OF THE BANK FOR
10 AT LEAST 60 DAYS AFTER THE BANK RECEIVES THE WRITTEN OBJECTION. A
11 BANK OR 1 OR MORE AFFILIATES OF THE BANK MAY RECEIVE REASONABLE
12 COMPENSATION IN CONNECTION WITH THE PURCHASE OF THE PRODUCT,
13 SERVICE, OR SECURITY UNDER THIS SUBDIVISION.

14 (4) As used in subsection (3), "registered investment company"
15 means an investment company that is registered under the investment
16 company act of 1940, ~~title I of chapter 686, 54 Stat. 789~~ 15 USC
17 80A-1 TO 80A-64.

18 (5) For purposes of this section, a bank is considered to ~~be~~
19 ~~holding~~ HOLD funds or property in a fiduciary capacity if it is
20 holding the assets as trustee, personal representative, custodian,
21 conservator, guardian, agent, or in any other fiduciary capacity.