

HOUSE BILL No. 5833

April 29, 2004, Introduced by Reps. Milosch, Bisbee, Stahl, Brandenburg, Wenke, Huizenga, Palsrok and Shulman and referred to the Committee on Commerce.

A bill to amend 1941 PA 174, entitled

"An act to authorize the establishment and the maintenance of common trust funds; to authorize investments or participations therein; to define the requirements and terms thereof and the conditions and terms governing investments or participations therein and the admission and withdrawal of such investments or participations; to prescribe and define the rights, powers and duties of banks, trust companies, fiduciaries, participants, beneficiaries and other persons with respect thereto; to provide for the regulation and supervision thereof; and to repeal acts and parts of acts inconsistent with the provisions of this act,"

by amending the title and sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 (MCL 555.101, 555.102, 555.103, 555.104, 555.105, 555.106, 555.107, 555.108, 555.109, 555.110, 555.111, 555.112, and 555.113), section 1 as amended by 1984 PA 101 and section 9 as amended by 1986 PA 23, and by adding sections 4a and 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to authorize the establishment and the maintenance of common trust funds **and collective investment funds**; to authorize

1 investments or participations ~~therein~~ **in those funds**; to define
2 the requirements and terms ~~thereof and~~ **of those funds**, the
3 conditions and terms governing investments or participations
4 ~~therein~~ **in those funds**, and the admission and withdrawal of
5 ~~such~~ **those** investments or participations; to prescribe and
6 define the rights, powers, and duties of banks, trust companies,
7 fiduciaries, participants, beneficiaries, and other persons with
8 respect ~~thereto~~ **to common trust funds and collective investment**
9 **funds; and** to provide for the regulation and supervision
10 ~~thereof; and to repeal acts and parts of acts inconsistent with~~
11 ~~the provisions of this act~~ **of those funds.**

12 Sec. 1. (1) **This act shall be known and may be cited as the**
13 **"collective investment funds act".**

14 (2) As used in this act:

15 (a) **"Collective investment fund"** means a fund maintained by a
16 financial institution or by 1 or more affiliated financial
17 institutions that consists solely of assets of retirement,
18 pension, profit sharing, stock bonus, or other trusts that are
19 exempt from federal income tax.

20 (b) **"Common trust fund"** means a fund maintained by a
21 financial institution or 1 or more affiliated financial
22 institutions exclusively for the collective investment and
23 reinvestment of money contributed to the fund by the financial
24 institution or the affiliated financial institutions in its
25 capacity as a fiduciary or cofiduciary.

26 (c) **"Fiduciary"** means a financial institution or other person
27 acting in the capacity of guardian, conservator, personal

1 representative, or trustee, either solely or together with
 2 others, or custodian under a uniform gift or transfer to minors
 3 act of any state.

4 (d) ~~-(a)-~~ "Financial institution" means ~~a~~ any of the
 5 following:

6 (i) A state bank, national bank, state or federally chartered
 7 savings and loan association, or its ~~wholly-owned~~ wholly owned
 8 subsidiary. ~~—, or~~

9 (ii) A trust company ~~—~~ authorized to act in a fiduciary
 10 capacity in this state. ~~— or a~~

11 (iii) A member of an affiliated group within the meaning of
 12 section 1504 of the internal revenue code ~~which~~ of 1986 that
 13 includes ~~any of the above and which~~ an entity described in
 14 subparagraph (i) or (ii) that is authorized to act in a fiduciary
 15 capacity in any other state.

16 ~~(b) "Fiduciary" means a financial institution or person~~
 17 ~~acting in the capacity of executor, administrator, administrator~~
 18 ~~with the will annexed, administrator de bonis non guardian,~~
 19 ~~testamentary trustee, trustee appointed by any court, and trustee~~
 20 ~~under a written agreement, declaration, or instrument of trust,~~
 21 ~~either solely or together with others.~~

22 ~~— (c) "Common trust fund" means a fund maintained by a~~
 23 ~~financial institution, exclusively for the collective investment~~
 24 ~~and reinvestment of money contributed to the fund by the~~
 25 ~~financial institution in its capacity as a fiduciary or~~
 26 ~~cofiduciary and established, maintained, and administered~~
 27 ~~pursuant to the requirements of this act. For the purposes of~~

~~1 this act, 2 or more financial institutions shall be treated as 1
2 financial institution with respect to a fund of which any 1 of
3 the financial institutions is trustee or 2 or more of the
4 institutions are co-trustees.~~

5 (e) "Fund" means a common trust fund or a collective
6 investment fund.

7 (f) "Plan" means the written plan for a fund described in
8 section 4.

9 Sec. 2. ~~Establishment of common trust funds.~~

10 ~~Any~~ A financial institution may establish, maintain, and
11 administer 1 or more ~~common trust~~ funds. ~~for the purpose of
12 furnishing investments to itself as a fiduciary or cofiduciary.~~

13 Sec. 3. ~~Investment in common trust funds.~~

14 ~~Any~~ A financial institution in its capacity as a fiduciary
15 or cofiduciary ~~, whether such fiduciary capacity arose before or
16 is created after this act takes effect,~~ may invest funds ~~which
17 that~~ it lawfully holds for investment in ~~such~~ **that** capacity in
18 interests or participations in 1 or more common trust funds, if
19 ~~such~~ **the** investment is not prohibited by the instrument,
20 judgment, decree, or order creating the fiduciary relationship.
21 ~~, and if, in the case of cofiduciaries, the financial
22 institution procures the consent of its cofiduciary or
23 cofiduciaries to such investment.~~ A financial institution may
24 invest assets of retirement, pension, profit sharing, stock
25 bonus, or other employee benefit trusts exempt from federal
26 income tax that the financial institution holds in any capacity,
27 including agent, in a collective investment fund.

1 Sec. 4. (1) ~~Provisions of common trust funds and the~~
2 ~~effect thereof. Each common trust fund shall be established and~~
3 ~~maintained. A financial institution shall establish and maintain~~
4 **a fund** in accordance with a written plan ~~(referred to herein as~~
5 ~~the plan)~~ approved by resolution of the board of directors of
6 the financial institution ~~and approved in writing by competent~~
7 ~~legal counsel. The plan shall provide that the common trust fund~~
8 ~~shall be administered in conformity with the rules and~~
9 ~~regulations, prevailing from time to time, of the commissioner of~~
10 ~~the banking department of this state, and shall contain full and~~
11 ~~detailed provisions, not inconsistent with the provisions of such~~
12 ~~rules and regulations and the provisions of this act, as to the~~
13 ~~manner in which the common trust fund is to be operated, the~~
14 ~~investment powers with respect to the common trust fund, the~~
15 ~~allocation and apportionment of income, profits and losses, the~~
16 ~~terms and conditions governing the admission or withdrawal of~~
17 ~~investments or participations in the common trust fund, the~~
18 ~~auditing and settlement of accounts of the financial institution~~
19 ~~with respect to the common trust fund, the basis and method of~~
20 ~~valuing assets in the common trust fund, the basis upon which the~~
21 ~~common trust fund may be terminated, and such other matters as~~
22 ~~may be necessary to define clearly the rights of participants in~~
23 ~~the common trust fund. A copy of the plan shall be available at~~
24 ~~the principal office of the financial institution for inspection~~
25 ~~during all regular business hours to any person having an~~
26 ~~interest in a participation in the common trust fund. The plan~~
27 ~~may or may not provide for the amortization of premiums upon~~

~~1 bonds or other obligations, the disposition of discounts and~~
~~2 profits and the allocation of the same to principal or income~~
~~3 accounts or the apportionment of the same between principal and~~
~~4 income accounts, the establishment and maintenance of a reserve~~
~~5 out of current interest from mortgage investments against which~~
~~6 realized losses on mortgages may be charged, and other like~~
~~7 matters. The provisions of the plan shall control all~~
~~8 participations therein and the rights and benefits of all persons~~
~~9 interested in such participations as beneficiaries or otherwise.~~
10 or by a committee authorized by the board. The plan shall
11 contain full and detailed provisions as to the manner in which
12 the financial institution will operate the fund, including, but
13 not limited to, all of the following provisions:

14 (a) The investment powers and policies with respect to the
15 fund.

16 (b) The allocation of income, profits, and losses.

17 (c) The fees and expenses that the financial institution will
18 charge to the fund and to participating accounts.

19 (d) The terms and conditions governing the admission and
20 withdrawal of participating accounts.

21 (e) How participating accounts will be audited.

22 (f) The basis and method of valuing assets in the fund.

23 (g) The expected frequency of income distribution from the
24 fund to participating accounts.

25 (h) The minimum frequency of valuation of fund assets.

26 (i) The period of time following a valuation date in which a
27 valuation of fund assets must be made.

1 (j) The bases upon which the financial institution may
2 terminate the funds.

3 (k) Any other matters necessary to define clearly the rights
4 of participating accounts.

5 (2) A financial institution shall make a copy of a written
6 plan described in subsection (1) available at its principal
7 office for inspection during all regular business hours and shall
8 provide a copy of the plan to any person who requests it.

9 Sec. 4a. (1) At least once during each 12-month period, a
10 financial institution administering a fund shall arrange for an
11 audit of the fund by auditors responsible only to the board of
12 directors of the financial institution.

13 (2) At least once during each 12-month period, a financial
14 institution administering a fund shall prepare a financial report
15 of the fund based on the audit required in subsection (1). The
16 report shall disclose the fund's fees and expenses, a list of
17 investments in the fund, the cost and current market value of
18 each investment, and a statement covering the period after the
19 previous report that shows all of the following, organized by
20 type of investment:

21 (a) A summary of purchases, including costs.

22 (b) A summary of sales, including profit or loss and any
23 other investment changes.

24 (c) Income to and disbursements from the fund.

25 (d) A description of any investments in default.

26 (3) A financial institution administering a fund shall
27 provide a copy of the report described in section (1), or provide

1 notice that a copy of the report is available upon request
2 without charge, to each person who ordinarily would receive a
3 regular periodic accounting with respect to each participating
4 account. The financial institution may provide a copy of the
5 report to prospective customers and may provide a copy of the
6 report upon request to any person for a reasonable charge.

7 Sec. 5. ~~Investments of common trust funds.~~

8 ~~—The funds and assets of a common trust fund may be invested~~
9 ~~and reinvested in any 1 or more of such investments or items in~~
10 ~~which a person acting in a trust or fiduciary capacity, and who~~
11 ~~is not limited or restricted by investment specifications or~~
12 ~~limitations, may invest trust funds under the laws of this~~
13 ~~state.— A financial institution may invest and reinvest the~~
14 ~~assets of a fund in accordance with the plan for that fund.~~

15 Sec. 5a. (1) A financial institution administering a fund
16 shall not have an interest in that fund other than in its
17 fiduciary capacity. If, because of a creditor relationship or
18 otherwise, a financial institution acquires an interest in a
19 participating account, the financial institution shall withdraw
20 the participating account from the fund on the next withdrawal
21 date. However, a financial institution may invest assets that it
22 holds as fiduciary for its own employees in a fund.

23 (2) A financial institution administering a common trust fund
24 or a collective investment fund shall not make any loan secured
25 by a participant's interest in the fund. An unsecured advance to
26 a fiduciary account participating in the fund until the time of
27 the next valuation date does not constitute the acquisition of an

1 interest in a participating account by the financial
2 institution.

3 (3) A financial institution administering a fund may purchase
4 for its own account any defaulted investment held by the fund
5 rather than segregating the investment as provided in section 8,
6 if, in the judgment of the financial institution, the cost of
7 segregating the investment is excessive in light of the market
8 value of the investment. If a financial institution elects to
9 purchase a defaulted investment, it shall purchase it for its
10 market value or the sum of cost and accrued unpaid interest on
11 the defaulted investment, whichever is greater.

12 Sec. 6. (1) ~~Participations in common trust funds. The~~ A
13 financial institution shall **clearly** designate ~~clearly upon~~ in
14 its records the ~~names of the fiduciary~~ accounts ~~on behalf of~~
15 ~~which the financial institution, as fiduciary or cofiduciary,~~
16 ~~owns a participation in the common trust fund,~~ **invested in each**
17 **fund** and the extent of the interest of ~~such fiduciary accounts~~
18 ~~therein~~ **each account in each fund.**

19 ~~A certificate of participation may be issued for each~~
20 ~~investment or participation in a common trust fund. Such~~
21 ~~certificate shall state on its face that it is issued without~~
22 ~~guarantee by the issuing financial institution of the payment of~~
23 ~~either principal or interest, that it will be paid only when~~
24 ~~funds become available out of the assets comprising the common~~
25 ~~trust fund. No such certificate shall be issued in any form~~
26 ~~which purports to be negotiable or assignable.~~

27 (2) A financial institution administering a fund shall not

1 issue a certificate or other document representing a direct or
 2 indirect interest in the fund, except to provide a withdrawing
 3 account with a record of an interest in a segregated investment.

4 (3) ~~No~~ A fiduciary account owning or holding an investment
 5 or participation in a ~~common trust fund, or any certificate of~~
 6 ~~participation therein, shall be deemed to~~ fund has a
 7 proportionate undivided interest in the fund's assets. The
 8 fiduciary account does not have individual ownership of any asset
 9 in ~~such common trust~~ the fund. ~~, but should be deemed to have~~
 10 only a proportionate undivided interest in the common trust
 11 fund.

12 Sec. 7. ~~Management of common trust funds.~~

13 ~~The~~ A financial institution ~~shall have the~~ has exclusive
 14 management and control of ~~each common trust~~ a fund administered
 15 by it ~~, and the sole right at any time to sell, convert,~~
 16 exchange, transfer, or otherwise change or dispose of the assets
 17 comprising the ~~same~~ fund. Exclusive management and control
 18 include, but are not limited to, the right to delegate
 19 responsibilities to others to the extent a fiduciary may delegate
 20 responsibilities under the laws of this state. The ownership of
 21 ~~such~~ assets ~~shall be solely in the~~ in a fund by a financial
 22 institution ~~as fiduciary, and shall be considered as assets held~~
 23 ~~by it as~~ is solely as a fiduciary.

24 Sec. 8. ~~Valuation of assets of, and admissions to and~~
 25 ~~withdrawals from, common trust funds.~~

26 ~~Not less frequently than once during each period of 3 months,~~
 27 the financial institution administering a common trust fund shall

~~1 determine the value of the assets in the common trust fund. No
2 participation shall be admitted to or withdrawn from the common
3 trust fund except on the basis of such valuation and on the date
4 of the determination of such valuation or, if permitted by the
5 plan, within 2 business days subsequent to the date of such
6 determination.~~

~~7 ——— When participations are withdrawn from a common trust fund,
8 distributions may be in cash or ratably in kind, or partly in
9 cash and partly ratably in kind, provided that all such
10 distributions as of any 1 valuation date shall be made on the
11 same basis.~~

12 (1) A financial institution administering a fund that is not
13 invested primarily in real estate or other assets that are not
14 readily marketable shall determine the value of the fund's assets
15 at least every 3 months. A financial institution administering a
16 fund that is invested primarily in real estate or other assets
17 that are not readily marketable shall determine the value of the
18 fund's assets at least once a year. A financial institution
19 administering a fund shall admit an account to or withdraw an
20 account from the fund only on the basis of a valuation described
21 in this section.

22 (2) A financial institution administering a fund may admit an
23 account to or withdraw an account from the fund only if the
24 financial institution has approved a notice for or a notice of
25 intention of taking that action on or before the valuation date
26 on which the admission or withdrawal is based. A request or
27 notice shall not be canceled or countermanded after the valuation

1 date.

2 (3) A financial institution administering a fund shall make
3 distributions to accounts withdrawing from the fund in cash,
4 ratably in kind, in a combination of cash and ratably in kind, or
5 in any other manner consistent with applicable law in the state
6 in which the financial institution maintains the fund. If an
7 investment is withdrawn in kind from a fund for the benefit of
8 all participants in the fund at the time of the withdrawal but
9 the investment is not distributed ratably in kind, the financial
10 institution shall segregate and administer the investment for the
11 benefit ratably of all participants in the fund at the time of
12 withdrawal.

13 Sec. 9. ~~(1) A financial institution shall not invest any~~
14 ~~of its own funds in a common trust fund administered by it. If~~
15 ~~the financial institution, because of a creditor relationship or~~
16 ~~any other reason, acquires any interest in a participation in~~
17 ~~such common trust fund, the participation shall be withdrawn on~~
18 ~~the first date on which such withdrawal can be effected.~~

19 (1) ~~(2)~~ A financial institution **administering a fund** may
20 charge a reasonable ~~fee and recover its reasonable expenses for~~
21 ~~administering of a common trust fund, but the fractional part of~~
22 ~~such fee and expenses proportionate to the interest of each~~
23 ~~participant, when added to any other compensations charged by a~~
24 ~~financial institution to a participant, shall not exceed the~~
25 ~~total amount of compensations which would have been charged to~~
26 ~~that participant if no assets of that participant had been~~
27 ~~invested in participations in the fund~~ **management fee that does**

1 not exceed an amount equal to the value of legitimate services of
2 tangible benefit to the participating accounts that would not
3 have been provided to the accounts were they not invested in the
4 fund.

5 (2) A financial institution administering a common trust fund
6 may charge reasonable expenses incurred in operating a fund.

7 (3) ~~The~~ A financial institution shall ~~absorb~~ pay the cost
8 of establishing or reorganizing a ~~common trust~~ fund.

9 (4) ~~(3)~~ A financial institution may deduct the fee and
10 expenses ~~allowable~~ **allowed** under ~~subsection~~ **subsections (1)**
11 **and** (2) from the ~~common trust~~ fund or from the participating
12 accounts in proportion to their interests in the ~~common trust~~
13 fund.

14 Sec. 10. ~~Effect of mistakes.~~

15 ~~No~~ A mistake made in good faith and in the exercise of due
16 care in ~~the~~ connection with the administration of a ~~common~~
17 ~~trust~~ fund ~~shall be deemed to be~~ **is not** a violation of this
18 act or ~~of~~ any rules or regulations issued ~~pursuant thereto~~
19 **under this act**, if promptly after discovery of the mistake the
20 financial institution takes whatever action ~~may be practical in~~
21 **is reasonable under** the circumstances to remedy the mistake.

22 Sec. 11. ~~Rules and regulations.~~

23 ~~The administration of each common trust fund shall be subject~~
24 ~~to such rules and regulations as may from time to time be~~
25 ~~promulgated by the commissioner of the banking department of this~~
26 ~~state, to the extent that such rules and regulations are not~~
27 ~~inconsistent with the provisions of this act.~~ **The commissioner**

1 of the office of financial and insurance services may promulgate
2 and enforce rules regulating the administration of funds under
3 this act pursuant to the administrative procedures act of 1969,
4 1969 PA 306, MCL 24.201 to 24.328.

5 Sec. 12. ~~Other common trust funds.~~

6 ~~Nothing herein contained shall prohibit a financial~~
7 ~~institution from establishing, maintaining, and administering 1~~
8 ~~or more common trust funds differing from the requirements of~~
9 ~~this act, in which only investments or participations are made by~~
10 ~~such financial institution, in accordance with specific contract~~
11 ~~authority.~~

12 (1) In addition to investing assets in a fund, a financial
13 institution may invest assets that it holds as fiduciary in any
14 of the following, to the extent not prohibited by applicable
15 law:

16 (a) In any of the following loans or obligations, if the
17 financial institution's only interest in the loans or obligations
18 is its capacity as fiduciary:

19 (i) A single real estate loan, a direct obligation of the
20 United States, or an obligation fully guaranteed by the United
21 States or a single fixed amount security, obligation, or other
22 property, either real, personal, or mixed, of a single issuer.

23 (ii) A variable amount note of a borrower of prime credit, if
24 the financial institution uses the note solely for investment of
25 funds held in its fiduciary accounts.

26 (b) In a fund maintained by the financial institution for the
27 collective investment of cash balances received or held by a

1 financial institution in its capacity as trustee, personal
2 representative, executor, administrator, guardian, or custodian
3 under a uniform gifts or transfers to minors act of any state
4 that the financial institution considers too small to be invested
5 separately to advantage. The total assets in a fund described in
6 this subdivision shall not exceed \$1,000,000.00 and the number of
7 participating accounts shall not exceed 100.

8 (c) In any investment specifically authorized by the
9 instrument creating the fiduciary account or in a court order, in
10 the case of trusts created by a corporation, including its
11 affiliates and subsidiaries, or by several individual settlors
12 who are closely related.

13 (d) In any collective investment authorized by applicable
14 law, including, but not limited to, an investment under a preneed
15 funeral statute of any state.

16 (e) In any other manner described by the financial
17 institution in a written plan approved by the financial
18 institution's state or federal regulator. In order to obtain a
19 special exemption, a financial institution shall submit to its
20 regulator a written plan that sets forth all of the following:

21 (i) The reason that the proposed fund requires a special
22 exemption.

23 (ii) The provisions of the proposed fund that are
24 inconsistent with this act.

25 (iii) The provisions of this act for which the financial
26 institution seeks an exemption.

27 (iv) The manner in which the proposed fund addresses the

1 rights and interests of the participating accounts.

2 (2) For purposes of this section, a financial institution
3 acts as a fiduciary if the financial institution acts as any of
4 the following:

5 (a) A trustee, personal representative, executor,
6 administrator, registrar of stocks and bonds, transfer agent,
7 guardian, assignee, receiver, or custodian under a uniform gifts
8 or transfers to minors act of any state.

9 (b) An investment adviser, if the financial institution
10 receives a fee for its investment advice.

11 (c) In any capacity in which the financial institution
12 possesses investment discretion on behalf of another.

13 (d) In any similar capacity that a federal banking agency
14 having authority over the financial institution may authorize
15 from time to time.

16 Sec. 13. ~~Court accountings.~~

17 Unless ordered by a court of competent jurisdiction, a
18 financial institution administering a ~~common trust~~ fund ~~shall~~
19 ~~not be~~ **is not** required to ~~render~~ **provide an accounting** to a
20 court ~~accounting~~ with regard to ~~such~~ **the** fund. ~~;~~ ~~but it may,~~
21 ~~by~~ **By** application to ~~the circuit court, in chancery, of~~ the
22 **state probate court with jurisdiction for a county in** ~~which it~~
23 **this state where the financial institution** has its principal
24 office, **a financial institution may** secure approval of ~~such~~ an
25 accounting ~~on such~~ **under the** conditions ~~as~~ **established by** the
26 court. ~~may establish.~~