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House Bill 6299 (Substitute H-1 as passed by the House)  
Sponsor: Representative David Law  
House Committee: Banking and Financial Services  
Senate Committee: Banking and Financial Institutions

Date Completed: 11-30-06

## **CONTENT**

**The bill would amend the Banking Code to do both of the following:**

- Establish a rebuttable presumption regarding the reasonableness of a bank's fees for conducting trust services.**
- Allow a bank, or a bank and one or more cofiduciaries, to use money or property held in trust to buy a product, service, or security at a reasonable price from or through the bank or an affiliate, unless prohibited by the agreement, instrument, or order creating or defining the trust.**

### Reasonable Fees: Rebuttable Presumption

Under the Code, upon application, the Commissioner of the Office of Financial and Insurance Services (OFIS) may grant trust powers to any bank or State foreign bank branch, subject to conditions, limitations, and restrictions in the Code. A bank or State foreign bank branch approved for trust powers may conduct a trust business, including charging a reasonable fee for its services in acting as a fiduciary. The bill specifies that, in any action or proceeding concerning fees, there would be a rebuttable presumption that a fee was reasonable if both of the following applied:

- The fee or its method of computation was specified in a fee schedule or fee agreement of the bank or State foreign bank branch in effect at the time the service was provided.
- The agency or custody principal, the trust grantor, or any other person who was entitled to be kept reasonably informed of the fiduciary account and its administration under the Estates and Protected Individuals Code (EPIC) received notice of the fee schedule or fee agreement before the fee was charged.

### Investment

The Banking Code requires a bank to invest any money or property that it holds as fiduciary, and that is available for investment, at the time and in the manner specified in the agreement, instrument, or order creating or defining the trust or other capacity in which the bank acts. If the bank holds funds or property as agent, it must invest the money or property as directed or permitted by the bank's principal.

Unless prohibited by the agreement, instrument, or order creating or defining a trust or other capacity, a bank or a bank and one or more cofiduciaries may invest in a registered investment company even though either or both of the following apply:

- The bank or one or more of its affiliates provide services as investment adviser, sponsor, distributor, manager, custodian, transfer agent, registrar, or otherwise, to the investment company and receive reasonable remuneration for those services.
- The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority the investment company's directors or trustees.

The bill also would allow the bank, or the bank and one or more cofiduciaries, unless prohibited, to use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank, including an insurance product or a security that was underwritten or distributed by the bank or an affiliate of it or by a syndicate or selling group that included the bank or its affiliate, if the purchase price were reasonable. Such a transaction would require either the written consent of the revocable trust grantor or agency principal or, if the trust were irrevocable or the grantor were deceased or reasonably believed by the trustee to be incapacitated, after providing advance notice at least 45 days before the use of the money or property to any person then entitled to be kept reasonably informed of the fiduciary account and its administration under EPIC.

The advance notice would have to list the type of products, services, or securities available for purchase from or through the bank or an affiliate of the bank and would have to provide the name and address of an individual at the bank to whom a beneficiary receiving the notice could direct any objection. If the bank received a written objection to a notice, and the objection were not resolved or withdrawn, the bank could not use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank for at least 60 days after receiving the objection.

A bank or one or more affiliates of the bank could receive reasonable compensation in connection with the purchase of the product, service, or security.

MCL 487.14401 & 487.14405

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.