

Act No. 581
Public Acts of 2006
Approved by the Governor
December 30, 2006
Filed with the Secretary of State
January 3, 2007
EFFECTIVE DATE: January 3, 2007

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2006**

Introduced by Rep. David Law

ENROLLED HOUSE BILL No. 6299

AN ACT to amend 1999 PA 276, entitled "An act to revise and codify the laws relating to banks, out-of-state banks, and foreign banks; to provide for their regulation and supervision; to prescribe the powers and duties of banks; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; and to repeal acts and parts of acts," by amending sections 4401 and 4405 (MCL 487.14401 and 487.14405).

The People of the State of Michigan enact:

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

(2) The commissioner shall not grant trust powers to a state agency.

(3) If the commissioner approves an application described in subsection (1), the bank or state foreign bank branch has the power to conduct a trust business. This power includes, but is not limited to, all of the following:

(a) In its corporate name, to take, receive, hold, repay, reconvey, and dispose of any effects and property, both real and personal, that are granted, committed, transferred, or conveyed to it with its consent, according to the terms of any agreement or trust, at any time, by any individual, minor, corporate body, court, or any other person and to administer, fulfill, and discharge the duties of the trust.

(b) To act as agent for the transaction of business, the management of estates, the collection of rents, interest, dividends, and money, and the collection of principal and interest on mortgages, bonds, notes, and securities for money; to enforce the payment of any of these obligations; to act as agent for the purpose of issuing, negotiating, registering, transferring, or countersigning the certificates of stock, bonds, or other obligations of any corporation, association, or municipality; and to manage any sinking fund of any corporation, association, or municipality on the terms to which the parties have agreed.

(c) To accept and to execute the office of personal representative, trustee, receiver, conservator, liquidating agent, assignee, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship. If an application is made to a court for the appointment of a trustee, receiver, personal representative, or guardian of any minor, incompetent person, legally incapacitated person, or any other person subject to guardianship, the court may appoint the bank or state foreign bank branch, with its consent, to hold that office. The accounts of a bank or state foreign bank branch as trustee, receiver, conservator, liquidating agent, assignee, personal representative, or guardian shall be regularly settled and adjusted by the proper office or tribunals. All proper, legal, usual, and customary charges, costs, and expenses shall be allowed to the bank or state foreign bank branch for the care and management of an estate committed to it under this section. If appointed by any court, a bank or state foreign bank branch is not required to give any security except in the discretion of the court. If the court orders the bank or state foreign bank

branch to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state, or with personal surety or sureties on the bond satisfactory to the court.

(d) Subject to law, to exercise by its board of directors or authorized officers or agents all incidental powers necessary to carry on a trust business.

(e) A bank or state foreign bank branch acting as a fiduciary may charge a reasonable fee for its services. In any action or proceeding concerning fees, there is a rebuttable presumption that a fee is reasonable if the fee or its method of computation is specified in a fee schedule or fee agreement of the bank or state foreign bank branch in effect at the time the service is provided and if the agency or custody principal, the trust grantor, or any other person who is entitled to be kept reasonably informed of the fiduciary account and its administration under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, received reasonable notice of that fee schedule or fee agreement before the fee is charged.

Sec. 4405. (1) A bank shall invest any money or property held by the bank as fiduciary and 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 is acting or, if the bank holds the money or property as agent, as directed or permitted by the bank's principal. In the absence of investment specifications or limitations in the agreement, instrument, or order, the bank shall invest any money or property held by the bank as fiduciary within a reasonable time in real or personal property, of whatever type or nature, that a prudent investor would purchase, taking into account the purposes, terms, and distribution requirements expressed in the governing instrument, in the exercise of reasonable care, skill, and caution under conditions existing at the time of purchase. A bank's compliance with the prudent investor rule described in this subsection is determined in light of the facts and circumstances that exist at the time of the bank's decision or action as a fiduciary and requires a standard of conduct, not outcome or performance.

(2) A bank shall not invest any money or property held as fiduciary in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank unless 1 of the following applies:

(a) The investment is otherwise permitted by law, a court order, or the agreement, instrument, or order that creates or defines the trust or other fiduciary capacity in which the bank is acting.

(b) All interested parties or their representatives consent to the investment.

(c) The bank holds the money or property as an agent and the bank's principal directs or permits the investment.

(3) Except when the agreement, instrument, or order creating or defining the trust or other capacity in which the bank, or the bank and 1 or more cofiduciaries, is acting prohibits the investment or transaction, a bank or a bank and 1 or more cofiduciaries may do any of the following with any money or property over which the bank or the bank and 1 or more cofiduciaries exercises investment discretion:

(a) Invest the money or property in a registered investment company even though either or both of the following apply:

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

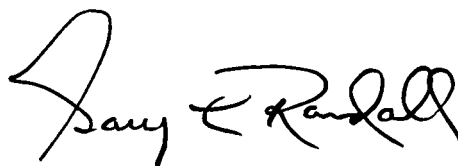
(ii) The bank as fiduciary owns or controls a majority of the voting shares of the investment company or a majority of the shares voted for the election of its directors or trustees or the bank as fiduciary otherwise controls the election of a majority of the investment company's directors or trustees.

(b) With the written consent of the revocable trust grantor or agency principal, or if the trust is irrevocable or the trust grantor is 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 the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102, use the money or property to purchase any product, service, or security from or through the bank or an affiliate of the bank, including, but not limited to, an insurance product or a security that is underwritten or distributed by the bank or an affiliate of the bank or by a syndicate or selling group that includes the bank or an affiliate of the bank, if the purchase price is reasonable. Any advance notice required under this subdivision shall list the type of products, services, or securities available for purchase from or through the bank or an affiliate of the bank and shall provide the name and address of an individual at the bank to whom a beneficiary receiving the notice may direct any objection. If the bank receives a written objection to a notice provided under this subdivision, and the objection is not resolved or withdrawn, the bank shall 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 the bank receives the written objection. A bank or 1 or more affiliates of the bank may receive reasonable compensation in connection with the purchase of the product, service, or security under this subdivision.

(4) As used in subsection (3), "registered investment company" means an investment company that is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor